

**BERKELEY COUNTY PUBLIC SERVICE**  
**DISTRICT (WEST VIRGINIA)**

**Water Refunding Revenue Bonds, Series 2003 A**  
**(Bank Qualified) and**  
**Water Refunding Revenue Bonds, Series 2003 B**  
**(Non-Bank Qualified)**

**VOLUME II OF II**

**Closing Date: April 30, 2003**

**BOND TRANSCRIPT**

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**\$3,360,000**  
**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)**

**Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)**  
**and**  
**Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified)**

**Date of Closing: April 30, 2003**

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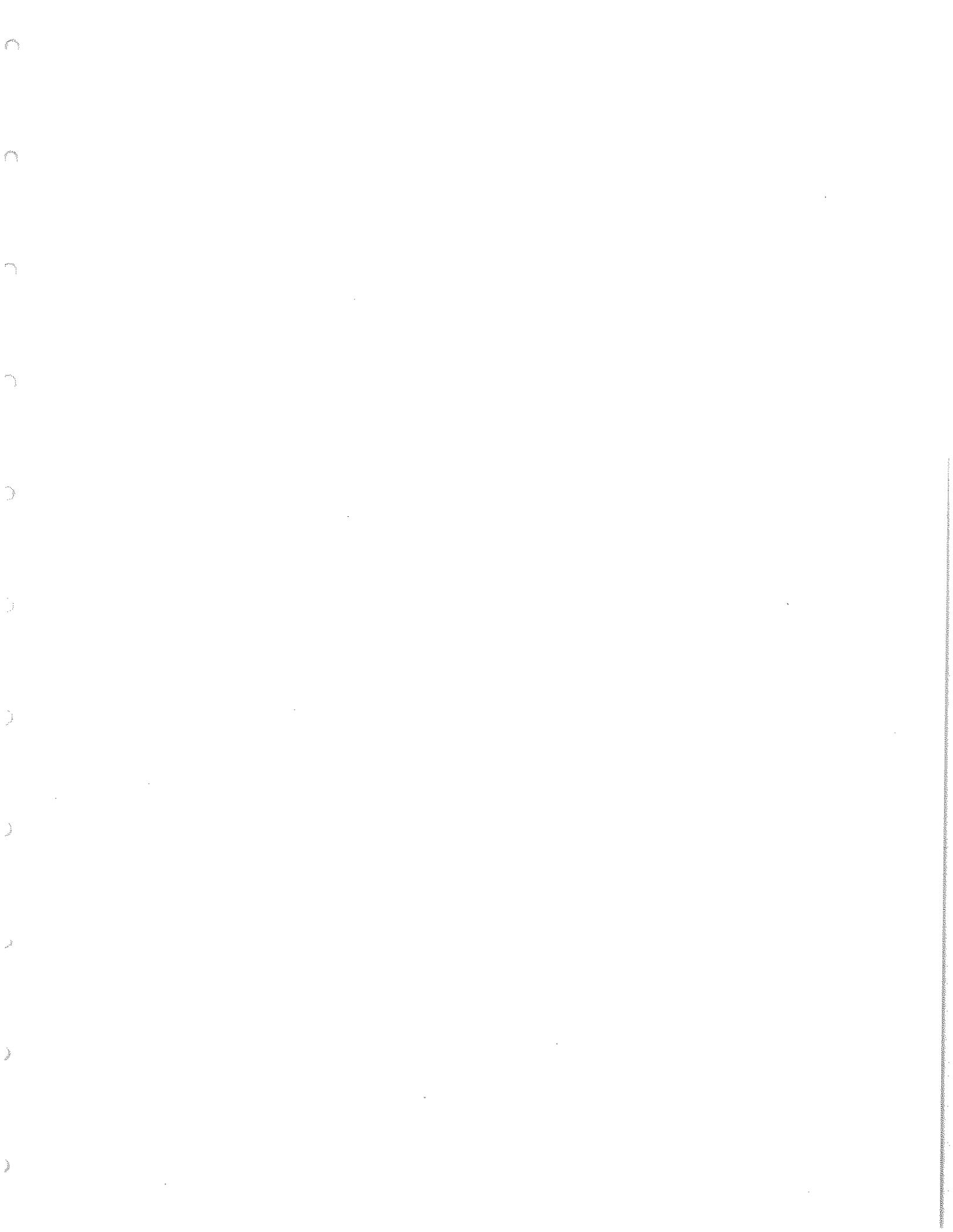
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BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
(West Virginia)

WATER REFUNDING REVENUE BONDS, SERIES 1993 A AND  
SERIES 1993 B

BOND RESOLUTION

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BERKELEY COUNTY PUBLIC SERVICE DISTRICT

A RESOLUTION AUTHORIZING THE REFUNDING OF THE DISTRICT'S WATER REVENUE BONDS, SERIES A, WATER REFUNDING REVENUE BONDS, SERIES 1988, WATER REVENUE BOND, SERIES 1990, AND OTHER WATER REVENUE OBLIGATIONS THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 1993 A AND SERIES 1993 B OF THE DISTRICT, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$3,900,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE DISTRICT, SHALL BE EXPENDED FOR SUCH REFUNDING, AND TO PAY COSTS AND EXPENSES IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, Berkeley County Public Service District (the "Issuer") in Berkeley County, West Virginia, presently owns and operates a public waterworks system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, extensions and improvements thereto by issuance of several series of bonds, refunding bonds or other obligations, of which there are presently outstanding the following:

(i) Water Revenue Bonds, Series A, dated March 1, 1960, originally issued in the aggregate principal amount of \$820,000, of which \$245,000 principal amount is presently outstanding (the "Series A Bonds");

(ii) Water Refunding Revenue Bonds, Series 1988, dated July 1, 1988, originally issued in the aggregate principal amount of \$2,360,000, of which \$2,025,000 is presently outstanding (the "Series 1988 Bonds");

(iii) Water Revenue Bond, Series 1990, dated November 14, 1990, originally issued in the principal amount of \$918,000, of which \$907,373 is presently outstanding (the "Series 1990 Bond"); and

(iv) A note, dated November 8, 1990, originally issued in the principal amount of \$79,000, of which \$70,000 is presently outstanding (the "Bank Loan");

WHEREAS, the Series A Bonds, Series 1988 Bonds, Series 1990 Bond and Bank Loan were issued pursuant to resolutions of the Issuer adopted on March 16, 1960, July 7, 1988, November 14, 1990 and November 8, 1990, as supplemented, respectively (such resolutions respectively herein called the "Series A Resolution," the "Series 1988 Resolution," the "Series 1990 Resolution" and the "Bank Loan Resolution" and collectively herein called the "Prior Resolutions");

WHEREAS, under the provisions of Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), the Issuer is authorized to issue water refunding revenue bonds to refund, pay or discharge all or any portion of its outstanding water revenue Bonds;

WHEREAS, the Issuer has been advised that substantial interest cost savings will be realized by refunding all of its outstanding water revenue bonds, being the Series A Bonds, the Series 1988 Bonds, the Series 1990 Bond and the Bank Loan (collectively, herein called the "Prior Bonds");

WHEREAS, the Issuer has determined and hereby determines that it would therefore be to the benefit of the Issuer and its residents to refund the Series A Bonds and the Series 1988 Bonds to their respective first redemption dates, being September 1, 1993, for the Series A Bonds and March 1, 1998 for the Series 1988 Bonds, and on such dates, to redeem and pay in full the entire remaining principal amount of the Series A Bonds and Series 1988 Bonds and the unpaid interest thereon, and to refund the Series 1990 Bond and the Bank Loan by payment, on the Closing Date, of the entire unpaid principal of and interest accrued on the Series 1990 Bond and the Bank Loan, in the manner set forth herein, with proceeds of the issuance of two series of bonds to be designated respectively, "Berkeley County Public Service District Water Refunding Revenue Bonds, Series 1993 A" and "Berkeley County Public Service District Water Refunding Revenue Bonds, Series 1993 B" (individually, the "Series 1993 A Bonds" and the "Series 1993 B Bonds," and collectively, the "Series 1993 Bonds") such Series 1993 Bonds to be in the maximum aggregate principal amount of \$3,900,000, and to be secured by and payable from the Net Revenues of the System of the Issuer and containing such other terms and provisions as are hereinafter provided; and

WHEREAS, the Issuer now desires to authorize the refunding of the Prior Bonds, as aforesaid, and to provide for the financing of such refunding by the issuance of the Series 1993 Bonds and such other provisions as hereinafter provided;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT:

ARTICLE I

DEFINITIONS; STATUTORY AUTHORITY; FINDINGS

Section 1.01. Definitions. All capitalized terms used in this Resolution and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Series 1993 Bonds.

"AMBAC Indemnity" means AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any temporary Chairman duly appointed by the Governing Body.

"Bank Loan" shall have the meaning set forth in the premises hereof.

"Bank Loan Resolution" shall have the meaning set forth in the premises hereof.

"Bond Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer or the Governing Body, and shall initially mean Steptoe & Johnson, Clarksburg, West Virginia.

"Bondholder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" or "Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds, and with respect to the Series 1993 Bonds, shall initially mean AMBAC Indemnity Corporation.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"Bond Year" means the 12 month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year except that the first Bond Year shall begin on the Closing Date.

"Bonds" means, collectively, the Series 1993 Bonds, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1993 Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM, attached hereto.

"Chairman" means the Chairman of the Governing Body of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1993 Bonds for the proceeds representing the purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Connection Fees" means the fees, if any, paid by customers of the System in order to connect thereto.

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms, means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of refunding

the Prior Bonds including payment of redemption premiums and accrued interest thereon, acquisition and construction of additions, betterments or improvements for the System, including the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during construction or acquisition and for not more than 6 months after completion of construction of any such project; amounts which may be deposited in the Reserve Account; engineering, legal and accounting expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of any such project, premiums for municipal bond insurance and reserve account insurance, letter of credit fees, fiscal agent fees and expenses, underwriter's discount, initial fees for the services of registrars, paying agents, depositories, trustees or escrow trustees, or other costs in connection with the sale of the Bonds and refunding of the Prior Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of any such project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed allowable Costs.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Debt Service," with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and a member of FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"District" or "Issuer" means Berkeley County Public Service District, in Berkeley County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body.

"DTC-eligible" means, with respect to the Series 1993 Bonds, meeting the qualifications prescribed by The Depository Trust Company, New York, New York.

"Escrow Agreement" means the agreement to be entered into between the Issuer, the Bond Commission and the Escrow Trustee, providing for the defeasance and ultimate payment of the Prior Bonds, the disposition of moneys in the various funds and accounts under the Prior Resolutions, and matters in connection therewith, the form of which shall be approved by Supplemental Resolution.

"Escrow Fund" means the Escrow Fund established by the Escrow Agreement.

"Escrow Trustee" means the escrow trustee under the Escrow Agreement, which shall be appointed pursuant to a resolution supplemental hereto.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the last day of the next succeeding June 30.

"FmHA" means Farmers Home Administration, United States Department of Agriculture, and any successor thereto, as owner of the Series 1990 Bond.

"Governing Body," "Board" or "Public Service Board" means the public service board of the Issuer, as may hereafter be constituted.

"Government Obligations" means direct and general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury).

"Gross Revenues" or "Revenues" means the aggregate gross operating and non-operating revenues of the System determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, but does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments). The terms "Revenues" or "Gross Revenues" shall include but not be limited to the Net Revenues.

"Independent Accountants" means any certified public accountant or firm of certified public accountants that shall at any

time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Interest Payment Date" means March 1 and September 1 of each year, commencing September 1, 1993.

"Issuer" or "District" means Berkeley County Public Service District, in Berkeley County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Fiscal Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy issued by AMBAC Indemnity insuring the payment when due of the principal of and interest on the Series 1993 Bonds as provided therein.

"Net Proceeds" means the face amount of the Series 1993 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1993 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Operating Expenses," unless qualified, means the reasonable current expenses, paid or accrued, of operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Registrar, the Depository Bank and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses"

does not include payments on account of the principal of or redemption premium, if any, or interest on the Prior Bonds or the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund provided for in Section 4.01 hereof.

"Original Purchaser" means Ferris, Baker Watts, Incorporated, Baltimore, Maryland, as the purchaser of the Series 1993 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 1993 Bonds with interest rates and other terms allowable under the Act, such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 1993 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 1993 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said Supplemental Resolution to be adopted by the Governing Body at the time of approval of such sale of said Series 1993 Bonds.

"Outstanding," when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Resolution and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar and any other paying agent for the Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Prior Bonds" shall have the meaning set forth in the premises hereof, and shall include the coupons appertaining thereto, if any.

"Prior Resolutions" shall have the meaning set forth in the recitals hereto.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Qualified Investments" means and includes any of the following:

A. The following obligations are Qualified Investments for all purposes, including defeasance investments in refunding escrow accounts:

(1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below), or

(2) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

B. The following obligations are Qualified Investments for all purposes other than defeasance investments in refunding escrow accounts:

(1) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

- Export-Import Bank
- Farmers Home Administration
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)

- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration;

(2) bonds, notes or other evidences of indebtedness rated "AAA" by Standard & Poor's Corporation and "Aaa" By Moody's Investors Service issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(3) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(4) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's Investors Service and which matures not more than 270 days after the date of purchase;

(5) investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation;

(6) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service, Inc. or any successors thereto; or

(B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such

irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of an interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(7) investment agreements approved in writing by AMBAC Indemnity Corporation [supported by appropriate opinions of counsel] with notice to Standard & Poor's Corporation;

(8) any State-administered pool investment fund in which the Issuer is statutorily permitted or required to invest; and

(9) other forms of investments approved in writing by AMBAC with notice to Standard & Poor's Corporation.

C. The value of the above investments shall be determined as follows:

"Value", which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

(1) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(2) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(3) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(4) as to any investment not specified above: the value thereof established by prior agreement between the Issuer and AMBAC Indemnity Corporation.

"Rebate Fund" means the Rebate Fund created by Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated or defined in the Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Account" means the Redemption Account created in the Sinking Fund by Section 4.02 hereof.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954, as amended.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund provided for in Section 4.01 hereof.

"Reserve Account" means the Reserve Account for the Series 1993 A Bonds created in the Sinking Fund by Section 4.02 hereof.

"Reserve Account Requirement" means, as of any date of calculation, Maximum Annual Debt Service on the Series 1993 A Bonds and any Bonds issued on a parity therewith, provided that such amount shall not exceed ten percent of the face amount of the Series 1993 A Bonds.

"Resolution," regardless of whether preceded by the article "the" or "this," means this Resolution, as it may hereafter from time to time be amended or supplemented.

"Revenue Fund" means the Revenue Fund provided for in Section 4.01 hereof.

"Secretary" means the Secretary of the Governing Body of the Issuer.

"Series A Bonds" shall have the meaning set forth in the premises hereof, and shall include the coupons appertaining thereto, if any.

"Series A Resolution" shall have the meaning set forth in the premises hereof.

"Series 1988 Bonds" shall have the meaning set forth in the premises hereof.

"Series 1988 Resolution" shall have the meaning set forth in the premises hereof.

"Series 1990 Bond" shall have the meaning set forth in the premises hereof.

"Series 1990 Resolution" shall have the meaning set forth in the premises hereof.

"Series 1993 A Bonds" means the Water Refunding Revenue Bonds, Series 1993 A, of the Issuer, originally authorized to be issued pursuant to this Resolution and the Supplemental Resolution.

"Series 1993 B Bonds" means the Water Refunding Revenue Bonds, Series 1993 B, of the Issuer, originally authorized to be issued pursuant to this Resolution and the Supplemental Resolution.

"Series 1993 Bonds" means, collectively, the Series 1993 A Bonds and the Series 1993 B Bonds.

"Sinking Fund" means the Sinking Fund created by Section 4.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 1993 Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities

and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system, and shall also include any additions, betterments, extensions, improvements or other facilities at any time acquired or constructed for the waterworks system of the Issuer.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

Reference to any account or fund created hereunder shall include accounts or funds continued hereby, whether expressly so provided or not.

Section 1.02. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a public service district and political subdivision of the State of West Virginia in Berkeley County of said State.

B. The Issuer now owns and operates the System, the acquisition and construction of which has been financed in part by the proceeds of the Prior Bonds which are currently outstanding in the aggregate principal amount of \$3,247,373.

C. The Issuer derives revenues from the System. The Net Revenues of the System are pledged for payment of the Prior Bonds. Except for such pledges thereof to secure and pay the Prior Bonds, said Net Revenues are not otherwise pledged or encumbered in any manner.

D. The Issuer intends to issue the Series 1993 Bonds to refund the Prior Bonds and to pledge for payment thereof, the Net Revenues of the System.

E. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, upon the refunding of the Prior Bonds, as herein provided, to provide for the operation and maintenance of the System, the payment of interest upon all bonds issued pursuant to the Act and to create a sinking fund, as hereinafter provided, to pay the principal thereof as and when it becomes due and reasonable reserves therefor, to provide an adequate renewal and replacement fund, as hereinafter provided, and to make all other payments provided for in this Resolution.

F. Based upon the principal amount, maturity schedule and interest rates for the Series 1993 Bonds presented to the Issuer by the Original Purchaser, and after making allowance for the use of cash on hand of the Issuer, the Series 1993 Bonds show a savings to the Issuer after deducting all expenses of the refunding and the costs of issuing the Series 1993 Bonds.

G. The Issuer shall not sell the Series 1993 Bonds without setting forth in the Supplemental Resolution the determination set forth in paragraph F, above, based upon the actual principal amount, maturity schedule and interest rates for the Series 1993 Bonds, and the Issuer shall not issue the Series 1993 Bonds without having obtained from an independent certified public accountant a certification that the amount of savings stated to be achieved by the refunding shall in fact be saved, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 1993 Bonds and the net interest cost in dollars of the Prior Bonds.

H. Subject to the determination and certification required by paragraph G, above, it is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Series 1993 Bonds to refund the Prior Bonds and secure the Series 1993 Bonds by a pledge of the Net Revenues, the moneys in the Sinking Fund and the Reserve Account therein, unexpended proceeds of the Series 1993 Bonds, if any, and as further set forth herein.

I. The Series 1993 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in

substantially the forms set forth in EXHIBIT A - BOND FORMS, attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Resolution or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

J. All things necessary to make the Series 1993 Bonds, when authenticated by the Registrar and issued as in this Resolution provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge those funds pledged hereby to the payment of the principal of and interest on the Series 1993 Bonds have been or will be timely done and duly performed.

K. The adoption of this Resolution, and the execution and issuance of the Series 1993 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument, agreement or document to which the Issuer is a party or by which it may be bound or affected.

L. As of the Closing Date, the only Outstanding obligations of the Issuer will be the Series 1993 Bonds and there will be no Outstanding obligations which will rank prior to or on a parity with the Series 1993 Bonds as to lien, pledge and/or source of and security for payment. The Series 1993 Bonds will be junior and subordinate to the Series 1993 A Bonds.

M. The Issuer has complied with all requirements of law relating to the operation of the System and the issuance of the Series 1993 Bonds, or will have so complied prior to issuance of any of the Series 1993 Bonds, including, among other things, the consent to and approval of the refunding of the Prior Bonds and issuance of the Series 1993 Bonds by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or otherwise having been waived to the extent lawfully allowed.

N. The period of usefulness of the System is not less than 40 years.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall own or hold the same from time to time, this Resolution and the provisions hereof shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of such Bonds, all of which shall be of equal rank and without

preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

## ARTICLE II

### AUTHORIZATION OF REFUNDING

#### Section 2.01. Authorization of Refunding of Prior Bonds.

The Series 1990 Bond, currently Outstanding in the principal amount of \$907,373 is hereby ordered to be refunded by the payment to FmHA, as the Owner thereof, on the Closing Date, of the entire principal of and interest accrued thereon. The Bank Loan, currently Outstanding in the principal amount of \$70,000, is hereby ordered to be refunded by the payment to the Owner thereof, on the Closing Date, of the entire principal of and interest accrued thereon. All Series A Bonds and Series 1988 Bonds Outstanding as of the date of issuance of the Series 1993 Bonds in the aggregate principal amount of \$2,270,000 are hereby ordered to be refunded pursuant to the terms of the Escrow Agreement, and the pledge of Net Revenues in favor of the Holders of such refunded Prior Bonds imposed by the Prior Resolutions, the moneys in the funds and accounts created by the Prior Resolutions and any other funds pledged by the Prior Resolutions thereto are hereby ordered terminated, discharged and released upon the payment in full of the principal of and interest on the Series 1990 Bond and the Bank Loan and payment into the Escrow Fund from the proceeds of the Series 1993 Bonds, together with other moneys available therefor, of the following: (a) if required by the Escrow Agreement, an amount equal to the fiscal and paying agent charges and the Escrow Trustee charges to become due and payable in connection with the Prior Bonds and (b) an amount which will be simultaneously invested in Government Obligations bearing interest and having maturities sufficient, together with certain cash which may also be deposited, to provide for the payment of the principal of and interest on the Series A Bonds and Series 1988 Bonds as the same become due, to the respective serial maturity dates thereof, but in no event beyond the respective first dates upon which the entire aggregate amount of the Series A Bonds and Series 1988 Bonds may be redeemed, being September 1, 1993, for the Series A Bonds and March 1, 1998, for the Series 1988 Bonds, all as set forth in the Escrow Agreement. Contemporaneously with the payment of the Series 1990 Bond and the Bank Loan, and deposit of such Series 1993 Bond proceeds into the Escrow Fund, the amounts on deposit in the sinking fund, including the reserve account therein, and all other funds and accounts created and maintained on behalf of the Prior Bonds shall be deposited in the Escrow Fund, the Reserve Account or such other fund or account as shall be set forth in the Escrow Agreement, and invested as provided in the Escrow Agreement or this Resolution, if applicable.

## ARTICLE III

### THE BONDS

Section 3.01. Form and Payment of Bonds. No Bond shall be issued pursuant to this Resolution except as provided in this Article III. Any Bonds issued pursuant to this Resolution, may be issued only as fully registered Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity. All Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable Interest Payment Date or on such Interest Payment Date, from such Interest Payment Date or, if no interest on such Bonds has been paid, from the date thereof; or, if and to the extent that the Issuer shall have defaulted in the payment of interest on any Interest Payment Date, then from the most recent Interest Payment Date to which interest has been paid or duly provided for.

The principal of and the premium, if any, on the Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$500,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Chairman, by his or her manual or facsimile signature, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may

nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in EXHIBIT A - BOND FORMS attached hereto and incorporated herein by reference with respect to the Series 1993 Bonds, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for registration and transfer set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State.

So long as any of the Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost.  
In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Net Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued pursuant to this Resolution, the following provisions shall apply:

- A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Redemption Account in accordance with Subsection 4.03(A)(3) and (6) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 13 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory redemption date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.
- B. At its option, to be exercised on or before the 60th day next preceding any such mandatory redemption date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.
- C. The Issuer shall on or before the 60th day next preceding each mandatory redemption date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the

preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the redemption date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, the Original Purchaser, and the registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

- (1) The redemption date,
- (2) The redemption price,
- (3) If less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial

redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the redemption date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Registrar, and

(6) Such other information, if any, as shall be required for DTC-Eligible Bonds.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

In addition to the foregoing notice, further notice as set out below shall be given by the Registrar, at the instruction of the Issuer, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat

the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(1) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each bond being redeemed; (iv) the maturity date of each bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed.

(2) Each further notice of redemption shall be sent at least 35 days before the redemption date by registered or certified mail or overnight delivery service to the Bond Buyer, of New York, New York, and all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds (such depositories now being Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, Pacific Securities Depository Trust Company of San Francisco, California and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania).

(3) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and (except as provided in Sections 3.01 and 6.18) for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Resolution. Upon the presentation and surrender of any Bond or Bonds

in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Series 1993 Bonds. For the purposes of refunding all of the Outstanding Prior Bonds of the Issuer, funding the Reserve Account or portion thereof and paying costs in connection therewith, there shall be issued the Series 1993 Bonds of the Issuer, in an aggregate principal amount of not more than \$3,900,000. Said Series 1993 Bonds shall be issued in two series, designated respectively, "Water Refunding Revenue Bonds, Series 1993 A" and "Water Refunding Revenue Bonds, Series 1993 B" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity, not exceeding the aggregate principal amount of Series 1993 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 1993 Bonds of each series shall be numbered with the series prefix from R-1 consecutively upward. The Series 1993 Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Book Entry System for Series 1993 Bonds.  
A. The Series 1993 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 1993 Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Series 1993 Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Series 1993 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Series 1993 Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a Series 1993 Bond or any other evidence of ownership of the Series 1993 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Series 1993 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Series 1993 Bonds, the Issuer and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Series 1993 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption Price of or interest on such Series 1993 Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Bondholder under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Registrar with respect to the principal or Redemption Price of or interest on the Series 1993 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Series 1993 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Series 1993 Bonds so redeemed, but DTC may return such Series 1993 Bonds and make an appropriate notation on the Series 1993 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Series 1993 Bonds of such maturity which have been redeemed.

D. The Issuer, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Series 1993 Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Series 1993 Bonds, selecting the Series 1993 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Series 1993 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Series 1993 Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder with respect to (i) the Series 1993 Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest

on the Series 1993 Bonds, (iv) any notice which is permitted or required to be given to Bondholders under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Series 1993 Bonds or (vi) any consent given or other action taken by DTC as Bondholder.

E. The book entry system for registration of the ownership of the Series 1993 Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Series 1993 Bonds; or (ii) the Issuer determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Series 1993 Bonds. In either of such events (unless in the case described in clause (ii) above, the Issuer appoints a successor securities depository), the Series 1993 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Series 1993 Bonds.

Section 3.12. Delivery of Series 1993 Bonds. The Issuer shall execute and deliver the Series 1993 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 1993 Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) A list of the names in which the Series 1993 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1993 Bonds to the Original Purchaser;

(C) Copies, certified by the Secretary of this Resolution and the Supplemental Resolution;

(D) The unqualified approving opinion upon the Series 1993 Bonds by Bond Counsel; and

(E) The Municipal Bond Insurance Policy or a copy thereof.

Section 3.13. Form of Series 1993 Bonds. The definitive Series 1993 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 1993 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval. The definitive Series 1993 Bonds shall have the form of the opinion of Steptoe & Johnson, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Series 1993 Bonds. Upon the issuance and delivery of the Series 1993 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

- A. All interest accrued on the Series 1993 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Sinking Fund and applied to payment of interest on the Series 1993 Bonds at the first Interest Payment Date.
- B. The amount of the Series 1993 Bond proceeds which, together with other moneys or securities of the Issuer deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series A Bonds and the Series 1988 Bonds (which amount shall be set forth in the Escrow Agreement) shall be deposited in the Escrow Fund.
- C. The amount of Series 1993 Bond proceeds sufficient to accomplish the refunding and payment in full of the Series 1990 Bonds shall be paid to FmHA immediately upon issuance of the Series 1993 Bonds.
- D. The amount of Series 1993 Bond proceeds sufficient to accomplish the refunding and payment in full of the Bank Loan shall be paid to the Owner thereof immediately upon issuance of the Series 1993 Bonds.
- E. The amount of Series 1993 Bond Proceeds which, together with other moneys or securities of the Issuer, are equal to the Reserve Account Requirement, shall be remitted to the Bond Commission for deposit in the Reserve Account, provided that, to the extent the Reserve Account Requirement is satisfied in whole or in part from proceeds of any fund or account established pursuant to the Prior Resolution, Series 1993 Bond Proceeds shall be deposited in the Reserve Account only to the extent needed to satisfy the balance of the Reserve Account Requirement.

F. The amount of Series 1993 Bonds proceeds sufficient to pay all costs of issuance of the Series 1993 Bonds and miscellaneous costs of refunding the Prior Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay such costs of issuance of the Series 1993 Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the Issuer. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this Resolution, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose, such unapplied proceeds shall be transferred by the Issuer to the Redemption Account established by Section 4.01 hereof. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Holders of the Series 1993 Bonds from which such proceeds are derived.

## ARTICLE IV

### SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. Pursuant to this Article IV, the following separate and special funds are created with, and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other (except as set forth in this Section 4.01) and used solely for the purposes provided herein:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Operation and Maintenance Fund;
- (4) Costs of Issuance Fund; and
- (5) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. Pursuant to this Article IV, the following special fund and accounts are hereby established with and shall be held by the Bond Commission:

- (1) Sinking Fund;
  - (a) Within the Sinking Fund:
    - (i) Reserve Account; and
    - (ii) Redemption Account.

Section 4.03. System Revenues and Application Thereof. So long as any of the Bonds shall be Outstanding and unpaid, the Issuer covenants as follows, subject to the provisions of Section 5.03 hereof:

A. The entire Gross Revenues derived from the operation of the System shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Resolution. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund into the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System, and said amount and said fund shall be used and disbursed only for that purpose.

(2) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, beginning on the first day of that month which is 7 months prior to the first interest payment date on the Series 1993 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1993 A Bonds on the next ensuing semiannual interest payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next ensuing semiannual interest payment date on the Series 1993 A Bonds is less than 7 months, then such monthly payments for deposit in the Sinking Fund shall be increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on the Series 1993 A Bonds on such date.

(3) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment or mandatory redemption date of the Series 1993 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Sinking Fund, and in the Redemption Account therein in the case of Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1993 A Bonds on the next ensuing principal payment or mandatory redemption date, provided, that in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next ensuing principal payment or mandatory redemption date on the Series 1993 A Bonds is less than 13 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next ensuing principal payment date or mandatory redemption date on the Series 1993 A Bonds, the required amount of principal coming due on the Series 1993 A Bonds on such date.

(4) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, each month, apply such moneys, to the full extent necessary, for deposit into the Reserve Account beginning with the first full calendar month following the date on which (i) the valuation of investments in the Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Reserve Account is less than the Reserve Account Requirement, or (ii) amounts have been withdrawn from the Reserve Account, for deposit into the Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be sufficient to restore the amount of moneys on deposit in the Reserve Account to an amount equal to the Reserve Account Requirement; provided, that in no event shall the amount deposited into the Reserve Account in any month be less than, in the event the deficiency in the Reserve Account Requirement is due to a decrease in the value of the Qualified Investments therein in excess of 10% of such amount, an amount equal to not less than 1/4th of the amount of such deficiency, and otherwise, an amount equal to not less than 1/12th of the amount of the deficiency in the Reserve Account determined as set forth in clause (i) above and the amount then withdrawn from the Reserve Account (it being understood that any such 1/12th payment shall be made in such amount for 12 consecutive months unless the amount in the Reserve Account shall have been made equal to the Reserve Account Requirement prior to such twelfth consecutive month) subject to the provisions of Section 5.01(C) hereof; and provided further, that no payments shall be required to be made into the Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Reserve Account Requirement.

Amounts in the Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Bonds when due, when amounts in the Sinking Fund are insufficient therefor, and for no other purpose.

(5) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, beginning on the first day of that month which is seven months prior to the first interest payment date on the Series 1993 B Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1993 B Bonds on the next ensuing semiannual interest payment date, provided,

that in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next ensuing semiannual interest payment date on the Series 1993 B Bonds is less than seven months, then such monthly payments for deposit in the Sinking Fund shall be increased proportionately to provide, one month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on the Series 1993 B Bonds on such date.

(6) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment date of the Series 1993 B Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on the Series 1993 B Bonds on the next ensuing principal payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next ensuing principal payment date on the Series 1993 B Bonds is less than 13 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next ensuing principal payment date on the Series 1993 B Bonds, the required amount of principal coming due on the Series 1993 B Bonds on such date.

(7) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the prior month's Gross Revenues. No further payments shall be required to be made into the Renewal and Replacement Fund when there shall have been deposited therein, and so long as there shall remain on deposit therein, the sum of \$250,000.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due, whether by maturity or redemption prior to maturity, and are hereby pledged for such purpose. Pending such use, such moneys shall be invested in accordance with Article V.

The Issuer shall not be required to make any further payments into the Sinking Fund when the aggregate amount of funds in the Sinking Fund, including the Reserve Account

therein, is at least equal to the aggregate principal amount of Bonds issued pursuant to this Resolution then Outstanding, plus the amount of interest due or thereafter to become due on the Bonds then Outstanding.

As and when additional Bonds ranking on a parity with the Series 1993 A Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at or before maturity in accordance with the provisions hereof and to accumulate a balance in the Reserve Account in an amount equal to the maximum provided and required to be paid into the Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from the Sinking Fund.

The payments into the Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

The Issuer shall restore any withdrawals from the Reserve Account which have the effect of reducing the assets therein below the Reserve Account Requirement from the first Net Revenues available after all other required payments to the Sinking Fund, including any deficiencies for prior payments, have been made in full; provided, that the Issuer shall not be required to restore such deficiency when the aggregate amount of funds in the Sinking Fund, including the Reserve Account therein, is at least equal to the aggregate amount of Bonds issued pursuant to this Resolution then Outstanding, plus the amount of interest due or thereafter to become due on said Bonds then Outstanding.

Withdrawals and disbursements may be made by the Issuer from the Renewal and Replacement Fund only for the following purposes:

- (a) To make up any deficiency in the Reserve Account (so that the amount on deposit therein is at least equal to the Reserve Account Requirement);

(b) For the payment of the principal (including the principal amount to be paid under the mandatory redemption schedules) of or interest on the Bonds, but only in the event that at the time of such withdrawal there are not sufficient funds for such purpose in the Sinking Fund (including the Reserve Account);

(c) For the payment of the reasonable costs of land and depreciable renewals, repairs, extensions, improvements and additions to the System;

(d) For the payment of debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such land and depreciable renewals, repairs, extensions, improvements and additions to the System; or

(e) To meet payment of Operating Expenses of the System to whatever extent and if for any reason funds in the Operation and Maintenance Fund are insufficient for that purpose.

(8) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, accrue the surplus then remaining in the Revenue Fund and if there is a balance in the Revenue Fund in excess of the estimated amounts to be paid into the Operation and Maintenance Fund and the Sinking Fund during the succeeding 3 months, such excess may be withdrawn and paid into the Renewal and Replacement Fund or used for the purchase or retirement prior to maturity of Bonds.

(9) If on any monthly payment date the Gross Revenues are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond

Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding such designation to the contrary, the Bond Commission shall deposit all remittances in the amounts and in the funds and accounts as provided herein.

C. The Bond Commission shall, on or prior to any Interest Payment Date, or principal payment date, remit to the Paying Agent the amount payable on the Bonds on such dates, to the extent that moneys are available in the Sinking Fund for such payment.

D. The moneys on deposit in the Revenue Fund and the Renewal and Replacement Fund in excess of the sum insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of municipal funds under the laws of the State.

E. The Issuer shall remit from the Revenue Fund to pay the fees and charges, if any, when due, of the Bond Commission, the Registrar, the Paying Agent, the Escrow Trustee and the Depository Bank, on such dates as the Bond Commission, the Registrar, the Paying Agent, the Escrow Trustee and the Depository Bank, as the case may be.

F. All Connection Fees, if any, shall be deposited by the Issuer, as received, in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE;  
REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Resolution in Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Renewal and Replacement Fund or Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 3 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission, to semiannually transfer from the Reserve Account to the Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in the Reserve Account an amount at least equal to the Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually,

except in the event of a withdrawal from the Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Reserve Account shall, at any time, be less than the applicable Reserve Requirement, the applicable Bond Insurer shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Net Revenues after required deposits to the Sinking Fund and otherwise in accordance with Section 4.03(4).

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia State Issuer of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds of each series in such manner and to such extent as may be necessary, so that such Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on such Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1993 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Holders of the Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Net Revenues of the System, the moneys in the Sinking Fund and all accounts therein, the unexpended proceeds of the Bonds or moneys in a construction fund, if any, all as herein provided. No Holder or Holders of any Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues and Moneys in Sinking Fund; Series 1993 B Bonds Junior and Subordinate to Series 1993 A Bonds. The payment of the debt service of all of the Series 1993 A Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System and all moneys and securities in the Sinking Fund, including the Reserve Account therein, to the extent necessary to make the payments required under Section 4.03. The payment of the debt service of all of the Series 1993 B Bonds issued hereunder shall be secured by a lien on the Net Revenues derived from the operation of the System, but such lien shall be junior and subordinate in all respects, to the lien on such Net Revenues in favor of the Series 1993 A Bonds. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the Sinking Fund, all moneys and securities in the Sinking Fund, including the Reserve Account therein, and all other payments provided for in this Resolution, are hereby irrevocably pledged in the manner provided in this Resolution to the payment of the principal of and interest on the

Bonds herein authorized as the same become due and for the other purposes provided in this Resolution.

Section 6.04. Rates. Prior to the issuance of the Series 1993 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Secretary of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than the sum of (i) 115% of the Maximum Annual Debt Service on the Series 1993 A Bonds and any additional Bonds ranking on a parity with the Series 1993 A Bonds in any Fiscal Year; and (ii) the amount, if any, required to be deposited in the Reserve Account in order to satisfy the Reserve Account Requirement within a period of not more than 12 months, assuming equal payments are made each month. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to apply to the Public Service Commission of West Virginia as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination by the Issuer that less than the above-required coverage exists or in the event that the annual budget shows that less than the above-required coverage will be available at any time during the next ensuing Fiscal Year, such increase to provide rates and charges sufficient to produce such required coverage.

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Revenues of said System in the manner provided in this Resolution.

Section 6.06. Sale of the System. Subject to applicable provisions of law and rules and regulations of the Public Service Commission of West Virginia, the System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to defease the pledge created by this Resolution as provided by Section 9.01. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to Bond Commission for deposit in the Sinking Fund, and otherwise as prescribed by Section 9.01. Any balance remaining after such defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the Revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Depreciation Fund. Such payments of such proceeds into the Depreciation Fund or the Redemption Account shall reduce the amounts required to be paid into said funds by other provisions of this Resolution.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Resolution, as provided by Section 9.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding or, in lieu of such consent, the written consent of the

Bond Insurer, so long as the Bond Insurer is not in default under the Municipal Bond Insurance Policy. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Notwithstanding any of the foregoing provisions of this Section 6.06 to the contrary, the Issuer hereby reserves the right to sell, lease or otherwise convey all or any portion of the water distribution system consisting of certain 2-inch to 10-inch water lines, a storage tank and all necessary appurtenances serving the northern area of Berkeley County and described in the Agreement dated as of June 23, 1983, by and between the Issuer and Opequon Public Service District as the "franchised area" (the "Northern Water Lines")], such sale, lease or other conveyance of the Northern Water Lines to be at such time or times and in such manner and for such rents, prices or other compensation as the Issuer shall determine and without any other restrictions upon such sale, lease or other conveyance insofar as this Resolution is concerned. Moneys received upon any such sale (but not rental income derived from leasing), after deduction of all costs of such sale, shall be deposited upon receipt by the Issuer in the Revenue Fund and applied within 90 days of such receipt to redemption of all or a commensurate portion of the Series 1993 B Bonds then Outstanding. In the event proceeds of such sale exceed the then principal amount of Series 1993 B Bond Outstanding, they may be used for any lawful purpose of the Issuer.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Net Revenues with the Series 1993 A Bonds; and all obligations hereafter issued by the Issuer payable from the Revenues of the System, except such additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such Revenues and in all other respects to the Series 1993 A Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Series 1993 A Bonds, and the interest thereon, upon any of the income and Revenues of the System pledged for payment of the Series 1993 A Bonds and the interest thereon in this Resolution or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. No additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of the Series 1993 A Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or any combination of such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the increased annual Net Revenues expected to be received during the first year following the date of issuance of such parity Bonds shall not be less than 115% of the Maximum Annual Debt Service on the following:

- (1) The Series 1993 A Bonds and Series 1993 B Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "increased annual Net Revenues expected to be received" as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates adopted by the Issuer and approved by the Public Service Commission of West Virginia, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such additional parity Bonds, and shall not exceed the amount to be stated in the aforementioned certificate of Independent Accountants, which shall be filed in the office of the Secretary of the Issuer prior to the issuance of such additional parity Bonds. The Net Revenues actually derived from the System during the preceding Fiscal Year hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate

jointly made and signed by the Consulting Engineers and the Independent Accountants, and filed with the Governing Body, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer and approved by the Public Service Commission of West Virginia the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 1993 A Bonds, and all the covenants and other provisions of this Resolution (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1993 A Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any such Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Resolution required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Resolution.

No additional parity Bonds shall be valid unless authenticated pursuant to Section 3.03. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by Section 3.12 with respect to the Series 1993 Bonds (other than the Municipal Bond Insurance Policy), modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds (excluding the Series 1993 B Bonds) on such Net Revenues. Any such subordinate bonds, notes, certificates or other obligations, including the Series 1993 B Bonds, shall be payable from the Net Revenues remaining after all payments required to be made pursuant to Section 4.03(1), (2), (3) and (4) have first been paid. The Issuer shall not issue any obligations whatsoever payable from the Net Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such

Net Revenues, with the Bonds (excluding the Series 1993 B Bonds) except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Resolution on account of the Bonds then Outstanding (excluding the Renewal and Replacement Fund), and any other payments provided for in this Resolution, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The Issuer may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than is customarily carried by municipalities of equivalent size with respect to works and properties similar to the System to protect the Issuer from claims for bodily injury and/or death and from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System, provided that, the Issuer, with the review of an

insurance consultant and the concurrence of the Issuer, may elect to self-insure. If the Issuer determines in good faith that any required insurance is not commercially available at a reasonable cost with reasonable terms, it shall engage an insurance consultant to verify the determination and to make recommendations regarding the types, amounts and provisions of any such insurance that should be purchased or funded by the Issuer, taking into consideration the costs and practices of other municipal water and sewer systems of similar size and type in the State to the extent that such information is available. The Issuer may, upon resolution adopted in good faith and upon the recommendations of the insurance consultant, adopt alternate or supplemental risk management programs which the Issuer determines to be reasonable, including the right to self-insure and participate in captive insurance companies.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Secretary of the County Commission of Berkeley County prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the Gross Revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 6.10. Report of Consulting Engineers. The Issuer shall, at least once every year, retain recognized independent Consulting Engineers in the field of waterworks engineering to supervise and review the operation, maintenance and repair of the System and to report to the Governing Body in writing their recommendations and comments pertaining to the System. Such annual report of the Consulting Engineers, or a summary thereof, shall be made available, upon request, to the Original Purchaser upon request and any Bondholder.

Section 6.11. Free Services and Services Rendered to the Issuer. The Issuer will not render or cause to be rendered any free

providing of any services which would compete with services provided by the System.

Section 6.14. Books and Records. The Issuer will keep a proper system of accounts showing receipts from the operation of the System so long as consistent with the laws of the State and will keep proper books of record and account of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Governing Body. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Original Purchaser, within 120 days following the end of each Fiscal Year, and shall mail to any Bondholder requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution, and the status of all said funds and accounts.

(C) The amount of Series A Bonds, Bonds and other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Resolution and shall file said report with the Original Purchaser.

Section 6.15. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the Act and/or the by-laws, rules of procedure and resolutions of the Issuer, prepare and adopt by resolution a detailed, balanced budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance expenses of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of such Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and any bondholder who shall have filed their names and addresses with the Issuer for purposes of receiving such budget and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.16. Statutory Mortgage Lien. For the further protection of the Holders of the Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Bonds and shall be for the equal benefit of all Holders of the Bonds, provided, however, that the statutory mortgage lien in favor of the Holders of the Series 1993 B Bonds shall be junior and subordinate to the statutory mortgage lien in favor of the Holders of the Series 1993 A Bonds.

Section 6.17. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1993 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1993 Bonds during the term thereof is, under the terms of the Series 1993 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used

for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1993 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1993 Bonds during the term thereof is, under the terms of the Series 1993 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1993 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the project financed thereby, or if the Series 1993 Bonds are for the purpose of financing more than one project, a portion of the project financed thereby, and shall not exceed the proceeds used for the governmental use of the portion of the project financed thereby to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1993 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1993 Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will timely file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1993 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 1993 Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions or fail to take any actions the result of which would adversely affect such exclusion.

Section 6.18. Covenants Regarding the Municipal Bond Insurance Policy. The Issuer intends to obtain a Municipal Bond Insurance Policy for the Series 1993 Bonds from AMBAC Indemnity. The following additional covenants of the Issuer are required by AMBAC Indemnity as a condition to insuring the Series 1993 Bonds, shall apply to the Series 1993 Bonds and any other Bonds which may be insured by AMBAC Indemnity and shall be controlling with respect to such Series 1993 Bonds in the event any other provisions of this Resolution may be in conflict therewith. The Issuer hereby covenants, with respect to the Series 1993 Bonds and any other Bonds insured by AMBAC Indemnity, as follows:

A. Consent of AMBAC Indemnity. Any provision of this Resolution expressly recognizing or granting rights in or to AMBAC Indemnity may not be amended in any manner which affects the rights of AMBAC Indemnity hereunder without the prior written consent of AMBAC Indemnity.

B. Consent of AMBAC Indemnity in Addition to Bondholder Consent. Unless otherwise provided in this Section, AMBAC Indemnity's consent shall be required in addition to Bondholder consent, when required, for the purposes of (i) execution and delivery of any supplemental or amendatory resolution or change to or modification of this Resolution; (ii) removal of the Registrar or Paying Agent and selection and appointment of any successor; and (iii) initiation or approval of any other action which requires Bondholder consent.

C. Consent of AMBAC Indemnity Upon Event of Default. Anything in this Resolution to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined herein, AMBAC Indemnity shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders under this Resolution, including, without limitation, the right to accelerate the principal of the Series 1993 Bonds as described in this Resolution and the right to annul any declaration of acceleration, and AMBAC Indemnity shall also be entitled to approve all waivers of Events of Default.

D. Notices to be Given to AMBAC Indemnity. While the Municipal Bond Insurance Policy is in effect, the Issuer shall furnish to AMBAC Indemnity:

(1) As soon as practicable after the filing thereof, a copy of any financial statement of the Issuer and a copy of any audit and annual report of the Issuer;

(ii) A copy of any notice to be given to the registered owners of the Series 1993 Bonds, including, without limitation, notice of any redemption of or defeasance of Series 1993 Bonds, and any certificate rendered pursuant to this Resolution relating to the security for the Bonds; and

(iii) Such additional information AMBAC Indemnity may reasonably request.

The Issuer shall notify AMBAC Indemnity of any failure of the Issuer to provide relevant notices, certificates, etc.

The Issuer will permit AMBAC Indemnity to discuss the affairs, finances and accounts of the Issuer or any information AMBAC Indemnity may reasonably request regarding the security for the Series 1993 Bonds with appropriate officers of the Issuer. The Issuer will permit AMBAC Indemnity to have access to and to make copies of all books and records relating to the Series 1993 Bonds at any reasonable time.

AMBAC Indemnity shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within 30 days after receipt of written notice of the direction from AMBAC Indemnity shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Series 1993 Bonds.

Notwithstanding any other provision of this Resolution, the Issuer shall immediately notify AMBAC Indemnity if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default.

E. Payment Procedure Pursuant to Municipal Bond Insurance Policy. As long as the Municipal Bond Insurance Policy shall be in full force and effect, the Issuer and any Paying Agent agree to comply with the following provisions:

(i) At least one (1) day prior to all Interest Payment Dates, the Paying Agent shall determine whether there will be sufficient funds in the funds and accounts established pursuant to this Resolution to pay the principal of and

interest on the Series 1993 Bonds on such Interest Payment Date. If the Paying Agent determines that there will be insufficient funds in the funds and accounts to pay the principal of and/or interest on the Series 1993 Bonds on such Interest Payment Date, the Paying Agent shall so notify AMBAC Indemnity. Such notice shall specify the amount of the anticipated deficiency, the Series 1993 Bonds to which such deficiency is applicable and whether such Series 1993 Bonds will be deficient as to principal or interest, or both. If the Paying Agent has not so notified AMBAC Indemnity at least one (1) day prior to an Interest Payment Date, AMBAC Indemnity will make payments of principal and/or interest due on the Series 1993 Bonds on or before the first (1st) day next following the date on which AMBAC Indemnity shall have received notice of nonpayment from the Paying Agent.

(ii) The Paying Agent shall, after giving notice to AMBAC Indemnity as provided in (i) above, make available to AMBAC Indemnity and, at AMBAC Indemnity's direction, to the United States Trust Company of New York, as insurance trustee for AMBAC Indemnity or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer maintained by the Paying Agent and all records relating to the funds and accounts maintained under this Resolution.

(iii) The Paying Agent shall provide AMBAC Indemnity and the Insurance Trustee with a list of registered owners of Series 1993 Bonds entitled to receive principal or interest payments from AMBAC Indemnity under the terms of the Municipal Bond Insurance Policy, and shall make arrangements with the Insurance Trustee (a) to mail checks or drafts to the registered owners of Series 1993 Bonds entitled to receive full or partial interest payments from the Insurer and (b) to pay principal upon Series 1993 Bonds surrendered to the Insurance Trustee by the registered owners of Series 1993 Bonds entitled to receive full or partial principal payments from AMBAC Indemnity.

(iv) The Paying Agent shall, at the time it provides notice to AMBAC Indemnity pursuant to (i) above, notify registered owners of Series 1993 Bonds entitled to receive the payment of principal or interest thereon from AMBAC Indemnity (a) as to the fact of such entitlement, (b) that AMBAC Indemnity will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment, (c) that should they be entitled to receive full payment of principal from AMBAC Indemnity, they must surrender their Series 1993 Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Series 1993 Bonds to be registered in the name of AMBAC Indemnity) for payment to the Insurance Trustee, and not the Paying Agent, and (d) that should they be entitled to receive partial payment of principal from AMBAC Indemnity, they must surrender their Series 1993 Bonds for payment thereon first to the Paying Agent, who shall note on such Series 1993 Bonds the portion of the principal paid by the Paying Agent, and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

(v) In the event that the Paying Agent has notice that any payment of principal of or interest on a Series 1993 Bond which has become Due for Payment (as defined in the Municipal Bond Insurance Policy) and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Paying Agent shall, at the time AMBAC Indemnity is notified pursuant to (i) above, notify all registered owners that in the event that any registered owner's payment is so

hereof, and all covenants, stipulations, promises and agreements in this Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar and Paying Agent, AMBAC Indemnity and the registered owners of the Series 1993 Bonds.

Section 6.19 Small Issuer Exemption from Bank Nondeductibility Restriction. The Issuer hereby designates the Series 1993 Bonds for purposes of paragraph (3) of Section 265(b) of the Code and covenants that the Series 1993 Bonds do not constitute private activity bonds as defined in Section 141 of the Code and determined in accordance with Section 265(b)(3) of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for Federal income taxes (excluding, however, private activity bonds, as determined in accordance with the Code), including the Series 1993 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 1993, all as determined in accordance with the Code. For purposes of this paragraph and for the purposes of applying such Section 265(b)(3) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 265(b)(3) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as defined and set forth in the Code, availed of) to avoid the purposes of such Section 265(b)(3) of the Code and all entities benefiting thereby shall be treated as one issuer. The Series 1993 Bonds are not part of a composite issue.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions relating to the Bonds on its part in this Resolution or any Supplemental Resolution or in the Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Bondholder; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Bondholders, including the right to require the Issuer to perform its duties under the Act and this Resolution;

(C) Bring suit upon the Bonds;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Resolution with respect to the Bonds or the rights of the Bondholders.

No remedy by the terms of this Resolution conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto. All rights and remedies of the Holders of the Bonds shall be for the equal benefit of the Holders of the Bonds.

Section 7.03. Acceleration. If an Event of Default has occurred and is continuing, the Holders of not less than 25% in aggregate principal amount of any series of Bonds then Outstanding may, but only with the written consent of the Bond Insurer, so long as such Bond Insurer is not in default under the Municipal Bond Insurance Policy, by immediate notice in writing from such Holders or from the Registrar on behalf of such Holders to the Issuer and the Paying Agent, declare the principal of all Bonds then Outstanding to be immediately due and payable, and upon such declaration the said principal, together with interest accrued thereon, shall become due and payable immediately at the place of payment provided therein, anything in this Resolution or in the Bonds to the contrary notwithstanding.

Section 7.04. Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts established and continued as provided herein and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his, her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate,

maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Resolution and interest thereon and under any covenants of this Resolution for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Revenues of the System shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Bondholder shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, her or it shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Holders of the Bonds issued pursuant to this Resolution; provided, however, that such receiver shall hold and operate the System for the equal benefit of the Holders of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any Event of Default with respect to the provisions of this Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Notwithstanding any other provision of this Resolution, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of

this Resolution, any trustee or Bondholder's committee shall consider the effect on the Bondholders as if no Municipal Bond Insurance Policy were then in effect.

Section 7.05. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Resolution by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

## ARTICLE VIII

### REGISTRAR; PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 1993 Bonds shall be appointed pursuant to the Supplemental Resolution. The Chairman of the Issuer is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the Issuer, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Resolution and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit

any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Resolution, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Resolution by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a Bond. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer or by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a Bond. Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such

Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Resolution.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar shall also serve as the Paying Agent. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 8.02 shall also include the trusts and the duties of Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Resolution. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Bonds shall be and remain DTC-Eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder

and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Resolution. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Resolution, be held in trust for the purposes for which they were received.

Section 8.13. Bond Insurer Control of Registrar and Paying Agent. (i) Notwithstanding the foregoing, so long as AMBAC Indemnity insures any of the Series 1993 Bonds, the Registrar and Paying Agent may be removed at any time, at the request of AMBAC Indemnity, for any breach of its obligations set forth herein;

(ii) AMBAC Indemnity shall receive prior written notice of resignation of any Registrar or Paying Agent;

(iii) Every successor Registrar or Paying Agent appointed pursuant to this Article VIII shall be a trust company or bank in good standing located in or incorporated under the laws of a state, duly authorized to exercise trust powers and subject to examination by Federal or state authority, having a reported capital and surplus

of not less than \$7,000,000 and acceptable to AMBAC Indemnity. Any successor Paying Agent, if applicable, shall not be appointed unless AMBAC Indemnity approves such successor in writing;

(iv) Notwithstanding any other provision of this Resolution, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Resolution, the Registrar or Paying Agent shall consider the effect on the Bondholders as if there were no Municipal Bond Insurance Policy; and

(v) Notwithstanding any other provision of this Resolution, no removal, resignation or termination of the Registrar or Paying Agent shall take effect until a successor, acceptable to AMBAC Indemnity, shall be appointed.

## ARTICLE IX

### DEFEASANCE; DISCHARGE OF PLEDGE OF RESOLUTION

Section 9.01. Defeasance; Discharge of Pledge of Resolution. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then this Resolution and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be otherwise necessary to assure the continued exclusion of the interest on the Series 1993 Bonds from gross income for Federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee as its agent either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time and available therefor, shall be sufficient to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or such escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, redemption premium, if any, and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or such escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in

amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Bond Commission or such escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations or those Qualified Investments permitted under Section 1.01 hereof to be used for such purpose.

Section 9.02. Series 1993 Bonds to Remain Outstanding if Paid by Bond Insurer. In the event that the principal and/or interest due on the Series 1993 Bonds shall be paid by AMBAC Indemnity pursuant to the Municipal Bond Insurance Policy, the Series 1993 Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the pledge of Net Revenues and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of AMBAC Indemnity, subject to the terms hereof, and AMBAC Indemnity shall be subrogated to the rights of such registered owners.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendment or Modification of Resolution and Supplemental Resolution. This Resolution and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate of Excess Investment Earnings to the United States or otherwise as may be necessary to assure exemption from Federal income taxation of interest on the Series 1993 Bonds, provided that, in the event any of the Bonds are insured by AMBAC Indemnity, no such amendment or modification which adversely affects the security for such Bonds or the rights of AMBAC Indemnity may be effected without the written consent of AMBAC Indemnity. Otherwise, no materially adverse amendment or modification to this Resolution, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Bonds then Outstanding and affected thereby, which must be filed with the Governing Body of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Holder of such Bond, nor affect the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged or reduce the percentage of Bonds required for consent to any such modification or amendment. No change, variation or alteration of any kind of the provisions of this Resolution shall be made in any manner, except as in this Resolution provided.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Resolution may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Resolution if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Bondholder or his, her or its attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take

acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such Bonds and the numbers and other identification thereof, shall be confirmed by the Registrar.

Any request, consent or other instrument executed by the Holder of any Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Resolution shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Resolution shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the Issuer, be cancelled and delivered to the Registrar, or, if surrendered to the Registrar, be cancelled by it. No such Bonds shall be deemed Outstanding under this Resolution and no Bonds shall be issued in lieu thereof. All such Bonds shall be cancelled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this Resolution to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer. If any of said Bonds is a coupon Bond, the Registrar or said Paying Agent shall also publish such notice, not less than 30 days prior to the date such moneys will be returned to the Issuer, in an Authorized Newspaper.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, the Original Purchaser or the Bond Insurer shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

ISSUER

Berkeley County Public Service District  
Post Office Box 700  
Bunker Hill, West Virginia 25413  
Attention: General Manager

REGISTRAR AND PAYING AGENT

Charleston National Bank  
Capitol & Virginia Streets  
Charleston, West Virginia 25324  
Attention: Trust Officer

DEPOSITORY BANK

F & M Bank - Martinsburg  
131 South Queen Street  
Box 928  
Martinsburg, West Virginia 25401-0928  
Attention: Chief Executive Officer

ORIGINAL PURCHASER

Ferris, Baker Watts, Incorporated  
100 Light Street, Eighth Floor  
Baltimore, Maryland 21202  
Attention: Public Finance Department

BOND INSURER

AMBAC Indemnity Corporation  
One State Street Plaza  
New York, New York 10004  
Attention: Surveillance Department

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Governing Body or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Resolution.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Resolution and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Resolution. All the covenants, stipulations, promises and agreements contained in this Resolution by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds, the Original Purchaser and the Bond Insurer.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution or the Supplemental Resolution.

Section 10.11. Table of Contents and Headings. The Table of Contents, headings and catchlines of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All orders, resolutions or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 10.13. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 10.14. Effective Date. This Resolution shall take effect immediately upon adoption.

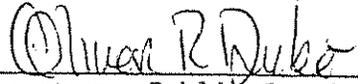
Adopted this 4th day of March, 1993.

Ruby S. Keir  
Chairman, Public Service Board

CERTIFICATION

Certified a true copy of a Resolution adopted by the Public Service Board of Berkeley County Public Service District on this 4th day of March, 1993, at a special meeting after the giving of the required public notice and at which a quorum was present and acting throughout, and which resolution has not been modified, amended, revoked or otherwise altered (except as set forth in the Supplemental Resolution, described herein and adopted concurrently herewith) as of the date hereof.

Dated this 24th day of March, 1993.

  
Secretary, Public Service Board

STATEMENT OF INSURANCE

Municipal Bond Insurance Policy No. \_\_\_\_\_ (the "Policy") with respect to payments due for principal of and interest on this Bond has been issued by AMBAC Indemnity Corporation ("AMBAC Indemnity"). The Policy has been delivered to the United States Trust Company of New York, New York, as the Insurance Trustee under said Policy and will be held by such Insurance Trustee or any successor insurance trustee. The Policy is on file and available for inspection at the principal office of the Insurance Trustee and a copy thereof may be secured from AMBAC Indemnity or the Insurance Trustee. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Bond acknowledges and consents to the subrogation rights of AMBAC Indemnity as more fully set forth in the Policy.

No. AR- \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
WATER REFUNDING REVENUE BOND,  
SERIES 1993 A

INTEREST RATE                      MATURITY DATE                      BOND DATE                      CUSIP NO.

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That BERKELEY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision duly organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above, and solely from such special funds

also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, at the Interest Rate per annum specified above, semiannually, on March 1 and September 1 of each year, beginning September 1, 1993 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Resolution.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HEREIN.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of the series of which this Bond is one.

This Bond, under the provisions of the Act (hereinafter defined) is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Resolution.

This Bond is exempt from all taxation by the State of West Virginia, and the other taxing bodies of said State.

This Bond shall not be entitled to any benefit under the Resolution, as defined on the reverse hereof, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

The Registrar shall not be obliged to make any transfer or exchange of Bonds that have been called for redemption. The Issuer has caused CUSIP numbers to be printed on the Bonds, and has directed the Registrar to use such numbers in certain notices, if any, as a convenience to Bondholders. No representation is made as to the accuracy of such numbers either as printed on the Bonds or as contained in any notice.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, BERKELEY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be imprinted hereon and attested by its Secretary, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Facsimile Signature)

Chairman

ATTEST:

(Facsimile Signature)

Secretary

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the Series 1993 A Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner on the date set forth below. Imprinted on the reverse hereof is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Date of Authentication: \_\_\_\_\_

CHARLESTON NATIONAL BANK,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

[FORM OF REVERSE OF BOND]

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by Charleston National Bank, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each February 15 and August 15) at the address of such Registered Owner as it appears on the registration books of the Issuer maintained by Charleston National Bank, Charleston, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of a series of bonds, in the aggregate principal amount of \$3,350,000 designated "Water Refunding Revenue Bonds Series 1993 A (the "Bonds")", of like tenor and effect, except as to series designation, number, denomination, date of maturity and interest rate, dated March 1, 1993, upon original issuance, the proceeds of which are to be used, together with proceeds of the Series 1993 B Bonds hereinafter described and other funds of the Issuer, to refund all of the outstanding water revenue bonds and other obligations of the Issuer, which were issued to finance or refinance the cost of acquisition and construction of public waterworks facilities of the Issuer (collectively, the "Prior Bonds"), and for other lawful purposes related to such refunding. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution and supplemental resolution duly adopted by the governing body of the Issuer on March 4, 1993 (hereinafter collectively referred to as the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

The Bonds are issued concurrently with the Water Refunding Revenue Bonds, Series 1993 B, of the Issuer, issued in the aggregate principal amount of \$380,000 (the "Series 1993 B Bonds"), which Series 1993 B Bonds are junior and subordinate with respect to liens and sources of and security for payment to the Bonds.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed hereon, by a policy of municipal bond insurance issued by Municipal Bond Investors Assurance Corporation.

Optional Redemption. The Bonds maturing on or after March 1, 2002 are subject to redemption prior to maturity at the option of the Issuer on and after March 1, 2001, in whole or in part at any time at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Redemption Period</u>	<u>Redemption Price</u>
March 1, 2001 through February 28, 2002	102½
March 1, 2002 through February 28, 2003	101
March 1, 2003 and thereafter	100

In the event of any redemption of less than all outstanding Bonds, Bonds shall be selected for redemption by lot or in such other manner deemed appropriate by the Registrar. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and maturity dates. Notice of the call for any redemption, unless waived by the Registered Owner, shall be given by the Registrar, by mailing a redemption notice, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of any Bond or portions of Bonds to be redeemed in whole or in part at the address shown on the registration books of the Issuer maintained by the Registrar, for registration and transfer of the Bonds under the Resolution, and as otherwise prescribed in the Resolution; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

The Bonds and the interest thereon are payable only from and are secured by the Net Revenues (as defined in the Resolution) to be derived with respect to the System, all moneys in the Sinking Fund established under the Resolution (including the Reserve Account therein) and the Revenue Fund, and the unexpended proceeds of the Bonds, and the Issuer hereby and in the Resolution pledges such revenues and moneys to such payment. Said Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued by the Issuer pursuant to the Act and shall be set aside as

a special fund hereby pledged for such purpose and to make certain other payments required by the Resolution. This Bond does not constitute a corporate indebtedness of the Issuer within any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, and the moneys in the Sinking Fund and the Revenue Fund, and the unexpended Bond proceeds, if any. Under the Resolution, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates and charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to produce revenues net of such operating expenses equal to at least 115% of the maximum annual amount required to pay the interest and principal as the same become due and accomplish retirement of the Bonds and any additional bonds issued on a parity therewith, and to make any required payments into the Reserve Account. Such required payments on behalf of the principal of and interest on the Bonds shall constitute a first charge upon all the Net Revenues of the System. The Issuer has entered into certain further covenants with the registered owners of the Bonds, for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds, after reimbursement and repayment of amounts advanced for preliminary expenses as provided by law, except for accrued interest thereon, shall be applied solely to refund such prior bonds, create a reserve for the Bonds and pay costs and expenses in connection therewith, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the registered owners of said Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of additional Bonds which shall be equally and ratably secured under the Resolution with the Bonds.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Indenture. Neither the Issuer nor the Registrar shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

This Bond is hereby and in the Resolution designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

ASSIGNMENT

Social Security or Other Identifying Number of Assignee  
\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns  
and transfers unto \_\_\_\_\_

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_

to transfer the said Bond on the books kept for registration thereof  
with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must  
correspond with the name as it appears upon the face of the within  
Bond in every particular, without alteration or any change whatever.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by Charleston National Bank, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each February 15 and August 15) at the address of such Registered Owner as it appears on the registration books of the Issuer maintained by Charleston National Bank, Charleston, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of a series of bonds, in the aggregate principal amount of \$380,000 designated "Water Refunding Revenue Bonds Series 1993 B (the "Bonds")", of like tenor and effect, except as to series designation, number, denomination, date of maturity and interest rate, dated March 1, 1993, upon original issuance, the proceeds of which are to be used, together with proceeds of the Series 1993 A Bonds hereinafter described and other funds of the Issuer, to refund all of the outstanding water revenue bonds and other obligations of the Issuer, which were issued to finance or refinance the cost of acquisition and construction of public waterworks facilities of the Issuer (collectively, the "Prior Bonds"), and for other lawful purposes related to such refunding. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution and supplemental resolution duly adopted by the governing body of the Issuer on March 4, 1993 (hereinafter collectively referred to as the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured prior to the Bonds from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THE BONDS ARE ISSUED CONCURRENTLY WITH THE WATER REFUNDING REVENUE BONDS, SERIES 1993 A, OF THE ISSUER, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$3,350,000 (THE "SERIES 1993 A BONDS"), AND THE BONDS ARE JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGES AND SOURCES OF AND SECURITY FOR PAYMENT TO THE SERIES 1993 A BONDS.

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed hereon, by a policy of municipal bond insurance issued by Municipal Bond Investors Assurance Corporation.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Resolution and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds are subject to redemption prior to maturity at the option of the Issuer in whole or in part at any time at the price of par, plus interest accrued thereon to the date fixed for redemption.

(B) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption prior to maturity on March 1 of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

<u>Year (March 1)</u>	<u>Principal Amount</u>
1994	\$65,000
1995	70,000
1996	75,000
1997	80,000
1998	90,000*

\* Final Maturity

In the event of any redemption of less than all outstanding Bonds, Bonds shall be selected for redemption by lot or in such other manner deemed appropriate by the Registrar. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and maturity dates. Notice of the call for any redemption, unless waived by the Registered Owner, shall be given by the Registrar, by mailing a redemption notice, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of any Bond or portions of Bonds to be redeemed in whole or in part at the address shown on the registration books of the Issuer maintained by the Registrar, for registration and transfer of the Bonds under the Resolution, and as otherwise prescribed in the

Resolution; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

The Bonds and the interest thereon are payable only from and are secured by the Net Revenues (as defined in the Resolution) to be derived with respect to the System, all moneys in the Sinking Fund established under the Resolution (excluding, however, the Reserve Account therein) and the Revenue Fund, and the unexpended proceeds of the Bonds, ALL JUNIOR AND SUBORDINATE TO THE LIEN ON AND PLEDGE THEREOF IN FAVOR OF THE SERIES 1993 A BONDS, and the Issuer hereby and in the Resolution pledges such revenues and moneys to such payment. Said Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued by the Issuer pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make certain other payments required by the Resolution. This Bond does not constitute a corporate indebtedness of the Issuer within any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, and the moneys in the Sinking Fund (excluding the Reserve Account) and the Revenue Fund, and the unexpended Bond proceeds, if any. Under the Resolution, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates and charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to produce revenues net of such operating expenses equal to at least 115% of the maximum annual amount required to pay the interest and principal as the same become due and accomplish retirement of the Series 1993 A Bonds and any additional bonds issued on a parity therewith and to make any required payments into the Reserve Account. Such required payments on behalf of the principal of and interest on the Series 1993 A Bonds shall constitute a first charge upon all the Net Revenues of the System. The Issuer has entered into certain further covenants with the registered owners of the Bonds, for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds, after reimbursement and repayment of amounts advanced for preliminary expenses as provided by law, except for accrued interest thereon, shall be applied solely to refund such prior bonds, and pay costs and expenses in connection therewith, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the registered owners of said Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of additional Bonds which may be secured prior and senior to the Bonds under the Resolution.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Indenture. Neither the Issuer nor the Registrar shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

This Bond is hereby and in the Resolution designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of the series of which this Bond is one.

This Bond, under the provisions of the Act (hereinafter defined) is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Resolution.

This Bond is exempt from all taxation by the State of West Virginia, and the other taxing bodies of said State.

This Bond shall not be entitled to any benefit under the Resolution, as defined on the reverse hereof, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

The Registrar shall not be obliged to make any transfer or exchange of Bonds that have been called for redemption. The Issuer has caused CUSIP numbers to be printed on the Bonds, and has directed the Registrar to use such numbers in certain notices, if any, as a convenience to Bondholders. No representation is made as to the accuracy of such numbers either as printed on the Bonds or as contained in any notice.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, BERKELEY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be imprinted hereon and attested by its Secretary, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the Series 1993 B Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Date of Authentication: \_\_\_\_\_.

CHARLESTON NATIONAL BANK,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee  
\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns  
and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_

to transfer the said Bond on the books kept for registration thereof  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must  
correspond with the name as it appears upon the face of the within  
Bond in every particular, without alteration or any change whatever.

03/19/93  
BCWC.A6  
06774/92001

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

(West Virginia)

\$3,730,000 Water Refunding Revenue Bonds,  
Series 1993 A and Series 1993 B

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICES AND OTHER TERMS OF THE WATER REFUNDING REVENUE BONDS, SERIES 1993 A AND SERIES 1993 B, OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT; AUTHORIZING AND APPROVING A BOND PURCHASE CONTRACT, A REGISTRAR AND PAYING AGENT AGREEMENT, AN ESCROW AGREEMENT, AN OFFICIAL STATEMENT AND OTHER INSTRUMENTS RELATING TO THE BONDS; APPOINTING AN ESCROW TRUSTEE, REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS AND THE REFUNDING.

WHEREAS, Berkeley County Public Service District (the "Issuer"), in the County of Berkeley, State of West Virginia, is a public service district and a public corporation and political subdivision of said State, the governing body of which is its public service board (the "Board");

WHEREAS, the Board duly adopted on March 4, 1993, a resolution (the "Resolution") entitled:

A RESOLUTION AUTHORIZING THE REFUNDING OF THE DISTRICT'S WATER REVENUE BONDS, SERIES A, WATER REFUNDING REVENUE BONDS, SERIES 1988, WATER REVENUE BOND, SERIES 1990, AND OTHER WATER REVENUE OBLIGATIONS THROUGH THE ISSUANCE OF WATER REFUNDING REVENUE BONDS, SERIES 1993 A AND SERIES 1993 B OF THE DISTRICT, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$3,900,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE DISTRICT, SHALL BE EXPENDED FOR SUCH REFUNDING, AND TO PAY COSTS AND EXPENSES IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT AND

OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

providing for the issuance of its Water Refunding Revenue Bonds, Series 1993 A and Series 1993 B (individually, the "Series 1993 A Bonds" and the "Series 1993 B Bonds" and collectively, the "Series 1993 Bonds"), in an aggregate principal amount not to exceed \$3,900,000 for the purpose of refunding the Issuer's outstanding Water Revenue Bonds, Series A; Water Refunding Revenue Bonds, Series 1988; Water Revenue Bond, Series 1990; and the Bank Loan (collectively, the "Prior Bonds"), all as set forth and described therein, in accordance with Chapter 16, Article 13A, of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Resolution provided that the exact principal amounts of the Series 1993 A Bonds and the Series 1993 B Bonds to be sold and the maturities, interest rates, redemption provisions and the prices of the Series 1993 A Bonds and the Series 1993 B Bonds should be established, that an Escrow Trustee, Paying Agent, Registrar and Depository Bank be designated and that other matters pertaining to the Series 1993 Bonds be provided for by resolution of this Board upon receipt of a Bond Purchase Contract acceptable to this Board;

WHEREAS, the Series 1993 Bonds are proposed to be purchased by Ferris, Baker Watts, Incorporated (the "Original Purchaser"), pursuant to a Bond Purchase Contract dated the date of adoption hereof (the "Purchase Contract");

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Resolution; and

WHEREAS, the Board deems it essential and desirable that this Supplemental Resolution be adopted and that the Purchase Contract, the Escrow Agreement and the Registrar and Paying Agent Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 1993 Bonds, hereinafter described, be approved, that the prices of the Series 1993 Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amounts of the Series 1993 A Bonds and the Series 1993 B Bonds be fixed hereby in the manner stated herein,

and that other matters relating to the Series 1993 Bonds be herein provided for, all in accordance with said Resolution;

NOW, THEREFORE, THE PUBLIC SERVICE BOARD OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT HEREBY RESOLVES:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Series 1993 A Bonds and the Series 1993 B Bonds in the aggregate principal amount of \$3,730,000. The Series 1993 A Bonds shall be issued in the aggregate principal amount of \$3,350,000, shall be dated March 1, 1993, upon original issuance, shall bear interest payable semiannually on March 1 and September 1 of each year, commencing September 1, 1993, and shall mature on March 1 in years as follows:

<u>Maturity</u> <u>(March 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity</u> <u>(March 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>
1994	\$190,000	2.40%	2002	\$200,000	4.50%
1995	195,000	3.00	2003	210,000	4.65
1996	200,000	3.40	2004	220,000	4.85
1997	205,000	3.60	2005	230,000	5.00
1998	220,000	3.80	2006	245,000	5.10
1999	220,000	4.00	2007	255,000	5.20
2000	185,000	4.20	2008	270,000	5.30
2001	195,000	4.40	2009	55,000	5.40
			2010	55,000	5.50

The Series 1993 B Bonds shall be issued in the aggregate principal amount of \$380,000, shall be dated March 1, 1993, upon original issuance, shall bear interest at the rate of 4.75% per annum, payable semiannually on March 1 and September 1 of each year, commencing September 1, 1993 and shall mature on March 1, 1998.

Section 2. The Series 1993 A Bonds maturing on or after March 1, 2002, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after March 1, 2001, in whole at any time or in part on any interest payment date, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the respective redemption prices (expressed as percentages of the principal amounts to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

<u>Redemption Period</u> (Both Dates Inclusive)	<u>Redemption</u> <u>Prices</u>
March 1, 2001 to February 28, 2002	102½
March 1, 2002 to February 28, 2003	101
March 1, 2003 and thereafter	100

The Series 1993 B Bonds shall be subject to mandatory sinking fund redemption prior to maturity at the principal amount thereof plus accrued interest thereon to the date set for redemption from mandatory sinking fund installments paid from the Sinking Fund on March 1 of the following years in the following amounts:

<u>Year</u> (March 1)	<u>Amount</u>
1994	\$65,000
1995	70,000
1996	75,000
1997	80,000
1998	90,000

The amounts accumulated for any sinking fund installment may be applied by the Trustee prior to the 45th day preceding the due date of such sinking fund installment to the purchase of Series 1993 B Bonds subject to redemption at a price (including any brokerage and other charges) not exceeding the principal amount thereof, plus accrued interest to the date of purchase. Upon any purchase of Series 1993 B Bonds by application of moneys set aside to pay sinking fund installments, an amount equal to the principal amount thereof shall be credited toward the applicable sinking fund installment, and any principal amount of Series 1993 B Bonds purchased or redeemed in excess of such sinking fund installment may be applied toward reduction of any applicable future sinking fund installments as the Issuer may designate.

All other provisions relating to the Series 1993 Bonds shall be as provided in the Resolution, and the Series 1993 A Bonds and the Series 1993 B Bonds shall be in substantially the forms provided in the Resolution.

Section 3. The Purchase Contract between the Original Purchaser and the Issuer, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the Chairman and the sealing and attestation by the Secretary of the Public Service Board on this day of the Purchase Contract on behalf of the Issuer are hereby authorized, approved and directed. The Chairman and Secretary shall execute and deliver the Purchase Contract with

such changes, insertions and omissions as may be approved by the Chairman. The execution of the Purchase Contract by the Chairman shall be conclusive evidence of any approval required by this Section. The price of the Series 1993 Bonds, pursuant to the Purchase Contract, shall be \$3,655,400 (\$3,730,000 par amount, less \$74,600 Underwriter's Discount), plus interest accrued from the date of the Series 1993 Bonds to the date of delivery of the Series 1993 Bonds, expected to be on or about March 24, 1993.

Section 4. The Official Statement dated March 4, 1993, to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Chairman) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Chairman shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Chairman. The execution of the Official Statement by the Chairman shall be conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary Official Statement dated March 1, 1993 (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Chairman is hereby ratified and approved.

Section 5. The Registrar and Paying Agent Agreement (the "Registrar's Agreement") to be dated the Closing Date, by and between the Issuer and the Registrar/Paying Agent designated herein, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Chairman shall execute and deliver the Registrar's Agreement with such changes, insertions and omissions as may be approved by the Chairman. The execution of the Registrar's Agreement by the Chairman shall be conclusive evidence of any approval required by this Section.

Section 6. The Escrow Agreement by and among the Issuer, the West Virginia Municipal Bond Commission and the Escrow Trustee designated herein, to be dated the Closing Date, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Chairman shall execute and deliver the Escrow Agreement with such changes, insertions and omissions as may be approved by the Chairman. Execution of the Escrow Agreement by the Chairman shall be conclusive evidence of any approval required by this Section.

Section 7. The Issuer does hereby appoint and designate Charleston National Bank, Charleston, West Virginia, for the purpose of serving in the capacities of Escrow Trustee, Registrar and Paying

Agent, and F & M Bank - Martinsburg, Martinsburg, West Virginia, for the purpose of serving as Depository Bank.

Section 8. The firm of Steptoe & Johnson, Clarksburg, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 1993 Bonds.

Section 9. The firm of Smith, Cochran & Hicks, Certified Public Accountants, Charleston, West Virginia, is hereby engaged for the purpose of verifying yield and sufficiency of the Escrow Fund and savings achieved by the refunding of the Prior Bonds.

Section 10. The Issuer and all subordinate entities do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year 1993 and hereby designates the Bonds as "qualified tax-exempt obligations," as defined in Section 265(b)(3)(B) of the Code.

Section 11. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1993 Bonds, hereby and by the Resolution approved and provided for.

Section 12. Based upon the actual principal amounts, maturity schedules and interest rates for the Series 1993 Bonds, as set forth in Paragraph (1) hereof, it is hereby determined that the Series 1993 Bonds show a net savings to the Issuer after deducting all expenses of the refunding. Prior to delivery of the Series 1993 Bonds, the Issuer shall have obtained from Smith, Cochran & Hicks, Certified Public Accountants, or such another independent certified public accountant acceptable to the Chairman, a certification that the amount of savings stated to be achieved by the refunding shall in fact be correct, based upon their review, comparison and analysis of the net interest cost in dollars of the Prior Bonds. The Chairman is hereby authorized and directed to employ Smith, Cochran & Hicks, Certified Public Accountants, or such another independent certified public accountant satisfactory to Bond Counsel to supply the certification required herein and to take other actions required in connection with the refunding.

Section 13. Under the provisions of the Act, and as provided in the Resolution and the Series 1993 Bonds, the Series 1993 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely from the Net Revenues derived from the operation of the waterworks system of the Issuer and the moneys in the Sinking Fund (including, with respect to

the Series 1993 A Bonds, the Reserve Account therein) established by the Resolution and the credit of the Issuer is not pledged for, and no tax shall ever be levied for, payment of the Bonds and the interest thereon.

Section 14. The Chairman, Secretary and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all actions necessary to cause the Series 1993 Bonds to be insured by AMBAC Indemnity Corporation or such other municipal bond insurance company as is acceptable to the Original Purchaser.

Section 15. The refunding of the Prior Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 16. All orders, ordinances or resolutions or parts thereof in conflict with the provisions of this Supplemental Resolution (excluding the Resolution) are, to the extent of such conflict, hereby repealed.

Section 17. This Supplemental Resolution shall be effective immediately.

Adopted this 4th day of March, 1993.

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

Randy S. Kern  
Chairman

CERTIFICATION

Certified a true copy of a Supplemental Resolution adopted by the Public Service Board of Berkeley County Public Service District on this 4th day of March, 1993, at a special meeting after the giving of the required public notice and at which a quorum was present and acting throughout, and which Supplemental Resolution has not been modified, amended, revoked or otherwise altered as of the date hereof.

Dated this 24th day of March, 1993.

Oliver R Duke  
Secretary, Public Service Board

03/19/93  
BCWC.B5  
06774/92001

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

UNION NATIONAL CENTER EAST

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

March 24, 1993

\$3,730,000

Berkeley County Public Service District  
(West Virginia)

Water Refunding Revenue Bonds, Series 1993 A and Series 1993 B

715 CHARLESTON NATIONAL PLAZA  
P. O. BOX 1588  
CHARLESTON, W. VA. 25302-1588  
(304) 353-8000  
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER  
P. O. BOX 1616  
MOHANTOWN, W. VA. 26507-1616  
(304) 528-8000  
FACSIMILE (304) 528-8116

126 EAST BURKE STREET  
P. O. BOX 2629  
MARTINSBURG, W. VA. 25401-6429  
(304) 263-6991  
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET  
P. O. BOX 100  
CHARLES TOWN, W. VA. 25414-0100  
(304) 725-1414  
FACSIMILE (304) 725-1913

THE BRYAN CENTRE  
82 WEST WASHINGTON STREET, SUITE 401  
HAGERSTOWN, MARYLAND 21740-4804  
(301) 791-9820  
FACSIMILE (301) 739-3848

WRITER'S DIRECT DIAL NUMBER

Berkeley County Public Service District  
Bunker Hill, West Virginia

Ferris, Baker Watts, Incorporated  
Baltimore, Maryland

AMBAC Indemnity Corporation  
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by Berkeley County Public Service District (the "Issuer") of its \$3,730,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 1993 A and Series 1993 B (individually, the "Series 1993 A Bonds" and the "Series 1993 B Bonds", and collectively, the "Bonds").

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and a Bond Resolution duly adopted by the Issuer on March 4, 1993, as supplemented by a Supplemental Resolution also duly adopted by the Issuer on March 4, 1993 (said Bond Resolution, as so supplemented, herein called the "Resolution") and are subject to all the terms and conditions of the Resolution.

The Bonds are issued in fully registered form, are dated March 1, 1993, upon original issuance, mature on March 1 in years and amounts and bear interest payable each March 1 and September 1, commencing September 1, 1993, as follows:

\$3,350,000  
Series 1993 A Bonds

<u>Maturity (March 1)</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Maturity (March 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
1994	\$190,000	2.40%	2002	\$200,000	4.50%
1995	195,000	3.00	2003	210,000	4.65
1996	200,000	3.40	2004	220,000	4.85
1997	205,000	3.60	2005	230,000	5.00
1998	220,000	3.80	2006	245,000	5.10
1999	220,000	4.00	2007	255,000	5.20
2000	185,000	4.20	2008	270,000	5.30
2001	195,000	4.40	2009	55,000	5.40
			2010	55,000	5.50

\$380,000  
Series 1993 B Bonds

<u>Maturity (March 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
1998	\$380,000	4.75%

The Series 1993 A Bonds maturing on and after March 1, 2002, are redeemable prior to their stated dates of maturity at the option of the Issuer, on or after March 1, 2001, in whole at any time or in part on any interest payment date in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of principal amounts to be redeemed), plus interest accrued to the date fixed for redemption, as provided in the Resolution.

The Series 1993 B Bonds are redeemable prior to their stated date of maturity at the option of the Issuer, in whole or in part at any time, at the price of par plus interest accrued to the date fixed for redemption, and are subject to mandatory sinking fund redemption prior to maturity on March 1 in years and amounts as provided in the Resolution.

The Resolution provides that the Bonds are issued for the purposes of providing funds, together with other moneys of the Issuer, (i) to pay costs necessary to refund all of the Issuer's outstanding bonds, notes and other obligations payable from revenues of the Issuer's public waterworks system (collectively, the "Prior Bonds"), (ii) to fund a reserve account for the Bonds, and (iii) to pay costs of issuance of the Bonds and other costs in connection with such refunding, all as set forth and described in the Resolution.

The Bonds have been sold to Ferris, Baker Watts, Incorporated (the "Purchaser") pursuant to a Bond Purchase Contract dated March 4, 1993, and accepted by the Issuer (the "Purchase Contract").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Escrow Trustee, the Depository Bank, the Registrar and the Paying Agent contained in the Resolution, the Escrow Agreement and the Registrar's Agreement (all such terms as defined in the Resolution) and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and agreements of the Issuer, the Escrow Trustee, the Depository Bank, the Registrar and the Paying Agent pertaining to tax matters set forth in the Resolution, the Escrow Agreement and the Registrar's Agreement and with certain certificates delivered in connection with the issuance of the Bonds, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing public corporation and political subdivision of the State of West Virginia under and pursuant to the Constitution and laws of such State and has full legal right, power and authority to adopt the Resolution, enter into the Escrow Agreement and the Purchase Contract, perform its obligations under the terms and provisions thereof, issue and sell the Bonds, refund the Prior Bonds, and own and operate its waterworks system (the "System").

2. The Issuer, through its governing body, has legally and effectively adopted the Resolution, has authorized, executed and delivered the Escrow Agreement and the Purchase Contract and has issued and delivered the Bonds to the Purchaser pursuant to the Purchase Contract. The Resolution is in full force and effect as of the date hereof and constitutes a valid and binding obligation of the Issuer, enforceable in accordance with its terms.

3. Assuming due authorization, execution and delivery by the other parties thereto, the Escrow Agreement and the Purchase Contract constitute the valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms; and the Bonds, subject to the terms thereof, constitute valid and legally enforceable limited obligations of the Issuer, payable and enforceable in accordance with their terms and the terms of the Resolution and are entitled to the benefits of the Resolution and the Act.

4. The Bonds constitute valid and legally binding special obligations of the Issuer. The Series 1993 A Bonds are payable solely from and secured by a first lien on and pledge of the net revenues derived from the operation of the System and moneys in the Sinking Fund created under the Resolution (including the Reserve Account therein). The Series 1993 B Bonds are also payable solely from and secured by a lien on and pledge of the net revenues derived from the operation of the System and moneys in the Sinking Fund created under the Resolution (excluding the Reserve Account therein), but junior and subordinate

to the lien in favor of the Series 1993 A Bonds. The Bonds are enforceable in accordance with their terms and the terms of the Resolution.

5. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income (adjusted current earnings for taxable years beginning after December 31, 1989). Ownership of tax-exempt obligations, including the Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences except as set forth in paragraph 7 below. Prospective purchasers of the Bonds should consult their own tax advisors as to such consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code") that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Resolution and the certificate relating to arbitrage. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds.

6. Under the Act, the Bonds are exempt from taxation by the State of West Virginia, and the other taxing bodies of the State, and the interest on the Bonds is exempt from personal and corporate income taxes imposed directly thereon by the State of West Virginia.

7. The Issuer has designated the Bonds as "qualified tax-exempt obligations" for purposes of the Code and has covenanted that it does not reasonably expect to issue, together with subordinate entities, more than \$10,000,000 of tax-exempt obligations (other than private activity bonds) during the calendar year 1993. Therefore, the Bonds are "qualified tax-exempt obligations," and the provision of the Code which disallows all deductibility of interest expense incurred by financial institutions on debt incurred or continued to purchase or carry most tax-exempt obligations does not apply to the Bonds; accordingly, 80% of the interest expense of a financial institution incurred for the purpose of purchasing or carrying the Bonds is deductible for federal income tax purposes.

8. The Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia

Berkeley County Public Service District, et al.  
Page 5

Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Bonds, to register any securities under said Securities Acts.

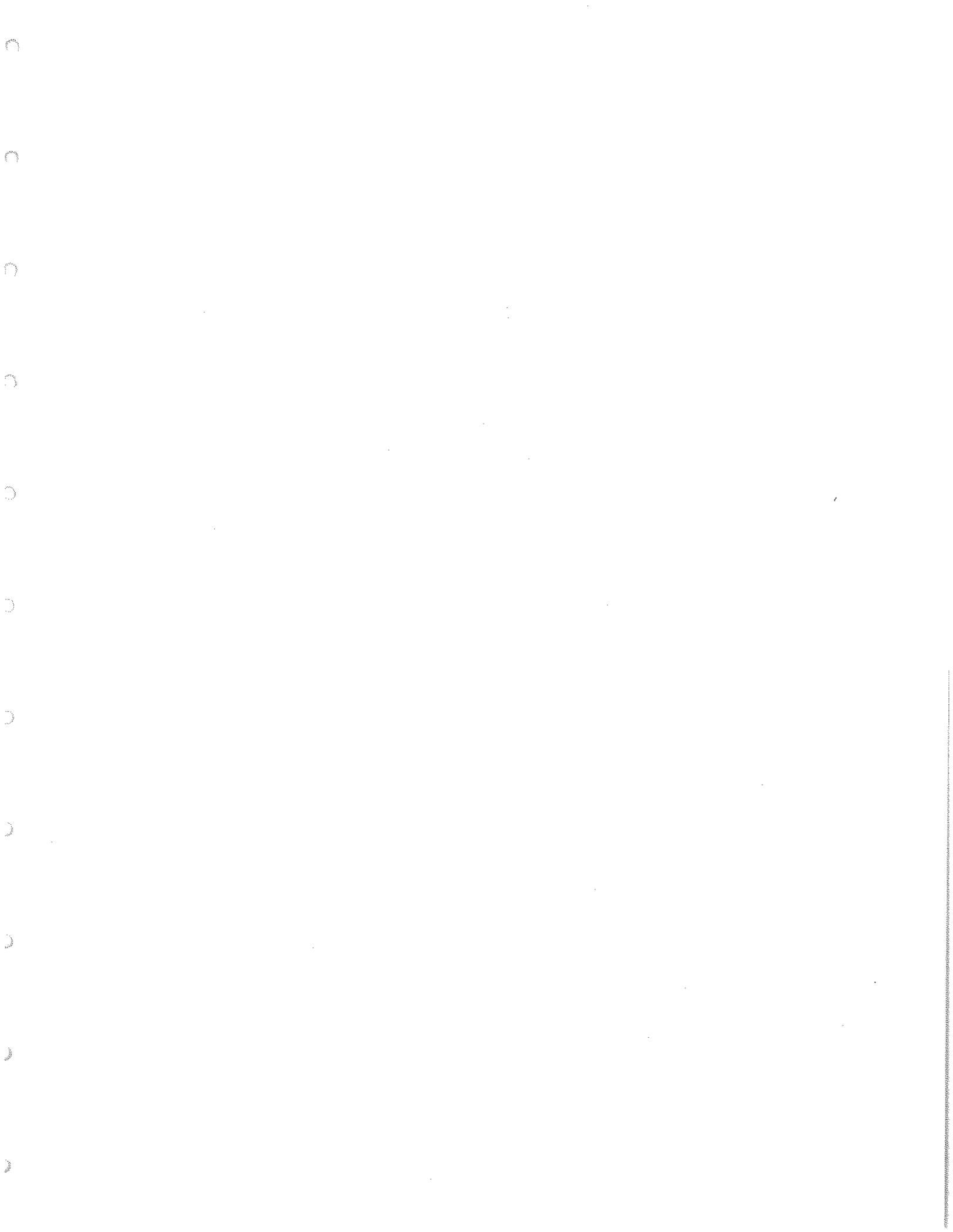
9. The Prior Bonds have been paid within the meaning and with the effect expressed in the resolutions authorizing the issuance thereof, and the covenants, agreements and other obligations of the Issuer to the holders and owners of such Prior Bonds have been satisfied and discharged. In rendering the opinion set forth in this paragraph 9, we have relied upon the opinion of certain independent certified public accountants that the maturing principal of and interest to be earned on the United States Treasury Obligations deposited in the Escrow Fund established with the Escrow Trustee, together with any other moneys on deposit in said Escrow Fund, will be sufficient to provide for the payment of the principal of and interest on such Prior Bonds as the same become due, to and including the respective first redemption dates thereof and on such dates, to pay the redemption prices of the Prior Bonds.

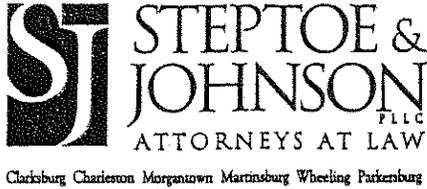
It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Resolution, the Escrow Agreement and the Purchase Contract are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally, and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

  
STEPTOE & JOHNSON

03/18/93  
BCWC.D5  
06774/92001





Bank One Center, Seventh Floor  
P.O. Box 1588  
Charleston, WV 25326-1588  
(304) 353-8000 (304) 353-8180 Fax  
www.steptoelaw.com

Writer's Contact Information  
(304) 353-8196 - Telephone  
(304) 353-8181 - Fax  
stumpjc@steptoe-johnson.com

April 30, 2003

FILE COPY

Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003 A (Bank Qualified)

Via Hand Delivery

Bank One, West Virginia, National Association  
707 Virginia Street  
Post Office Box 1113  
Charleston, West Virginia 25324  
ATTENTION: Ms. Lorene B. Mullins, Senior Trust Officer

Dear Lorene:

As bond counsel for Berkeley County Public Service District (the "Issuer"), we wish to advise you that on April 30, 2003 (the "Closing Date"), the Issuer delivered the above-captioned bonds (the "Bonds") to Ross, Sinclair & Associates (the "Purchaser"). A portion of the proceeds of the Bonds will be used to defease, on June 15, 2003, the Issuer's Water Refunding Revenue Bonds, Series 1993, dated March 1, 1993, heretofore issued, currently outstanding in the aggregate principal amount of \$1,330,000, as set forth in the Notice of Redemption enclosed herein (collectively, the "Refunded Bonds"). Bank One, West Virginia, National Association, is the Registrar for the Refunded Bonds.

On the Closing Date, the Issuer funded a Prepayment Fund, pursuant to a Prepayment Agreement dated April 30, 2003, by and between the Issuer and the West Virginia Municipal Bond Commission (the "Commission"), as Prepayment Agent. The Prepayment Fund has been funded with \$1,330,000 from the proceeds of the Bonds, wired by the Purchaser to the Commission on the Closing Date. The Commission has deposited \$1,349,308.07 into the Prepayment Fund, such amount, comprised of proceeds of the Series 2003 A Bonds in the amount of \$1,330,00 and the remaining funds from monies in the Series 1993 A Bonds Reserve Account.

The amounts deposited in the Prepayment Fund have been applied in accordance with the Funds Wiring Memorandum attached hereto.

As Registrar for the Refunded Bonds, you are hereby authorized and directed to mail redemption notices substantially in the form attached hereto, at the times, to the addressees and otherwise in accordance with Section 3.07 of the Resolution pursuant to which the Refunded Bonds were issued. Please review the redemption notice carefully to confirm the information contained therein. Additionally, please take any and all other steps necessary for the redemption of the Refunded Bonds as set forth in Section 3.07 of the Resolution authorizing the Refunded Bonds, specifically including, but not limited to, the publication required therein.

If you have any questions regarding the foregoing, please feel free to call me.

Very truly yours,

John C. Stump

JCS/bal  
cc: Ms. Sara Boardman  
067780.00002



# M E M O R A N D U M

## VIA FACSIMILE

**To:** Melissa Seidt, Closing Coordinator  
Ross, Sinclair & Associates, Inc.

**From:** Brian Nurick

**Date:** April 29, 2003

**Subject:** Berkeley County Public Service Water Refunding Revenue Bonds, Series 2003A and B

**Cc:** John Stump, Esq. (304-353-8181); Yolanda Ortiz (212-2083404); Mary Beth Shellehamer (717-627-2854)

In order to expedite the payment of the insurance premium to AMBAC, we have revised the wiring instructions of the Underwriter as follows:

**Wire #1 - Paying/Escrow Agent**  
**\$3,217,790.10**

West Virginia Municipal Bond Commission  
Branch Banking and Trust Company,  
Charleston, West Virginia  
ABA# 051503394  
Acct# 5270517317  
Contact: Sara Boardman  
Telephone: 304-558-3971

**Wire #2 - Credit Enhancement Provider**  
**\$56,704.44**

Ambac Assurance Corporation  
Citibank N.A.  
ABA# 021000089  
Acct# 40609486  
Contact: Yolanda Ortiz  
Telephone: 212-208-3553

**Wire #3 - Cost of Issuance Bank**  
**\$35,312.50**

Farmers & Merchants Bank & Trust  
ABA# 055000259  
Account# 11006205  
Contact: Mary Beth  
Telephone: 866-350-9473

Should you have any questions please feel free to contact me at 800-255-0795. -Brian Nurick

*Ross, Sinclair & Associates*  
400 Democrat Drive  
Frankfort, KY 40601  
502-695-7353  
Fax: 502-695-2897

[TO BE SENT BY REGISTERED OR CERTIFIED MAIL  
AT LEAST 30 DAYS PRIOR TO REDEMPTION DATE]

NOTICE OF REDEMPTION

Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds, Series 1993 A  
March 1, 1993

TO THE HOLDERS OF ALL THE ABOVE-CAPTIONED BONDS:

NOTICE IS HEREBY GIVEN that all of the outstanding Berkeley County Public Service District (West Virginia) Water Refunding Revenue Bonds, Series 1993 A, dated March 1, 1993 (the "Refunded Bonds"), have been ordered by the District to be redeemed on June 15, 2003, in accordance with the provisions of the Bond Resolution pursuant to which the Refunded Bonds were issued. The outstanding Refunded Bonds mature on March 1 in the following years:

<u>Principal Amount</u>	<u>Maturity Date (March 1)</u>	<u>CUSIP</u>	<u>Interest Rate</u>
\$ 220,000	2004	084246 BQ 9	4.85%
\$ 230,000	2005	084246 BR 7	5.00%
\$ 245,000	2006	084246 BS 5	5.10%
\$ 255,000	2007	084246 BT 3	5.20%
\$ 270,000	2008	084246 BU 0	5.30%
\$ 55,000	2009	084246 BV 8	5.40%
\$ 55,000	2010	084246 BW 6	5.50%

All Refunded Bonds outstanding as of June 15, 2003, are to be surrendered for payment of the principal of and interest accrued thereon (the "Redemption Price") to June 15, 2003 (the "Redemption Date") to:

Bank One, West Virginia, N.A.  
707 Virginia Street, E.  
P. O. Box 1113  
Bank One Center  
Charleston, WV 25324-1113  
Attention: Corporate Trust.

There has been deposited with the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Prepayment Agent for the Refunded Bonds, an amount sufficient to fully pay, on the Redemption Date, the principal amount of each of the Refunded Bonds outstanding, plus interest thereon to the Redemption Date. On the Redemption Date, interest will cease to accrue on all Refunded Bonds and the Refunded Bonds will be deemed to be paid from such date.

No representation is made as to the correctness of the CUSIP numbers, either as printed on the Refunded Bonds or as contained in this notice or the mailing of this notice (including any failure to mail such notice).

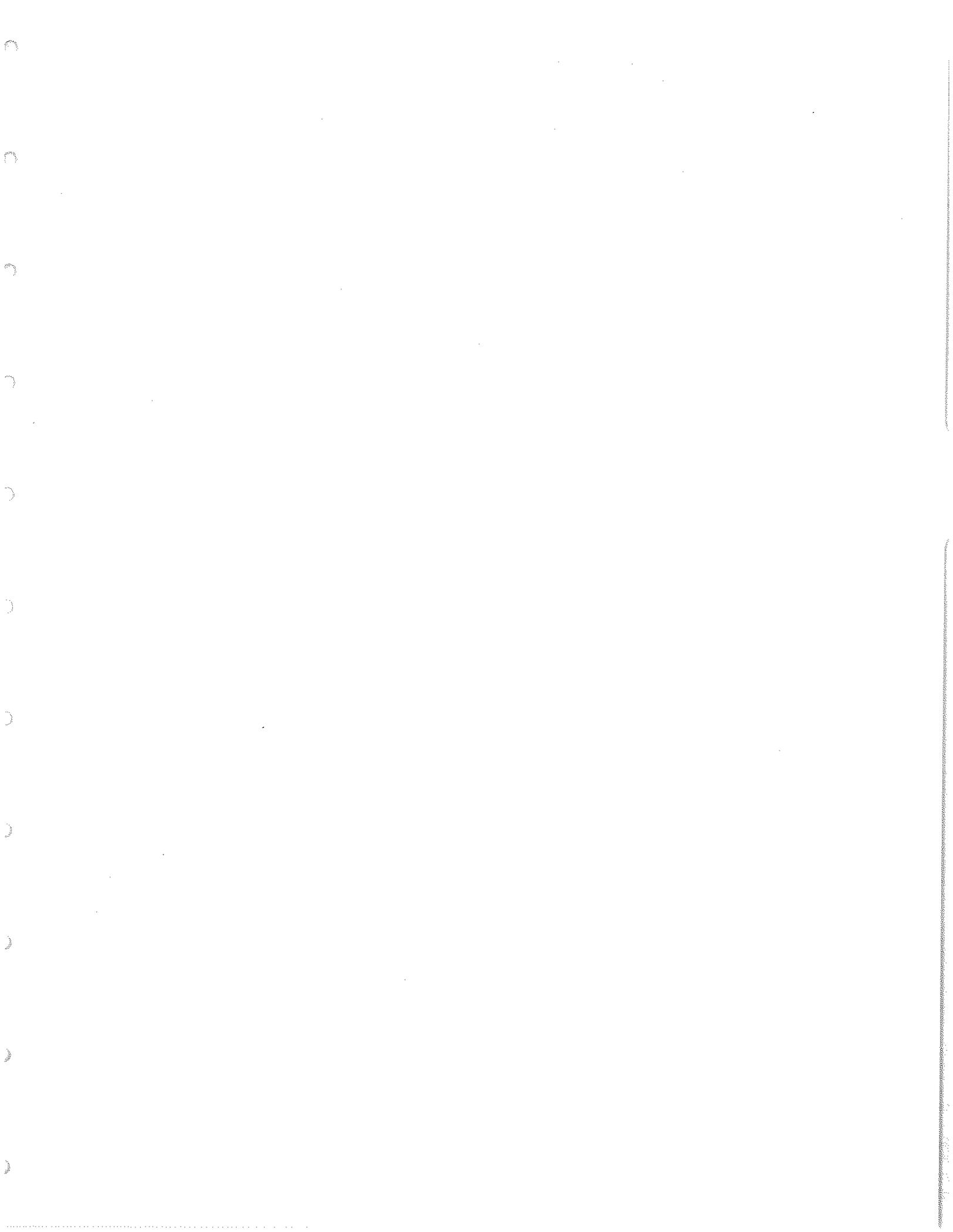
**IMPORTANT:** Under Federal law, individual holders of the Refunded Bonds who present such bonds for payment are required to submit their social security number, certified as correct under penalty of perjury. The required certification may be made on an Internal Revenue Service Form W-9. Holders of the Refunded Bonds may obtain copies of Form W-9 from their local bank or broker. If the social security number is not submitted and certified as correct, 31 % of the principal due under the bonds must be withheld and paid over to the IRS.

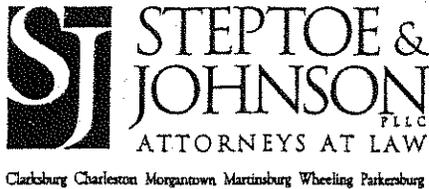
BANK ONE, WEST VIRGINIA, N.A., as registrar

/s/ \_\_\_\_\_  
Authorized Officer

Dated: May \_\_, 2003.

04/29/03  
067780.00002





Bank One Center, Seventh Floor  
P.O. Box 1588  
Charleston, WV 25326-1588  
(304) 353-8000 (304) 353-8180 Fax  
www.steptoelaw.com

Writer's Contact Information

COPY

April 29, 2003

\$3,360,000  
Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003A (Bank Qualified) and  
Series 2003 B (Non-Bank Qualified)

Via Hand Delivery

Mr. R. Witter Hallan, Executive Director  
West Virginia Municipal Bond Commission  
8 Capitol Street, Suite 500, Terminal Building  
Charleston, WV 25301

Dear Witter:

Please be advised that Berkeley County Public Service District (the "District") intends to issue the above-captioned bonds (the "Series 2003 Bonds") for the purpose of currently refunding all of its outstanding Water Refunding Revenue Bonds, Series 1993 A, dated March 1, 1993, to June 15, 2003, at which time they will be redeemed in full and to advance refund all of its outstanding Water Revenue Bonds, Series 1994, dated September 1, 1994, to September 1, 2004, at which time they will be redeemed in full. The Series 2003 Bonds will be purchased by Ross, Sinclair & Associates, of Frankfort, Kentucky.

The closing for the above-referenced bonds is scheduled for April 30, 2003. Please accept the letter of Ross, Sinclair & Associates of April 28, 2003 as the letter of instructions regarding the aforementioned refundings and you are hereby authorized to make the funds transfers and securities purchases set forth therein.

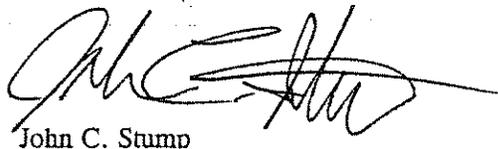
Please accept this letter as the recognition and affirmation by the District that the West Virginia Municipal Bond Commission was not involved in any way with the bidding and/or provision of the treasury securities utilized for the refundings. The treasury securities were selected through a bidding agent.

Finally, please find enclosed herein copies of the authorizing Resolution, Supplemental Resolutions, the Prepayment Agreement, the Escrow Agreement, the Joint Certificates of the District and the Commission and the Verification Report.

Thank you for your attention to this letter and cooperation with the issues set forth herein. If you have any questions regarding any aspect of this transaction, please do not hesitate to call.

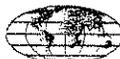
My best regards.

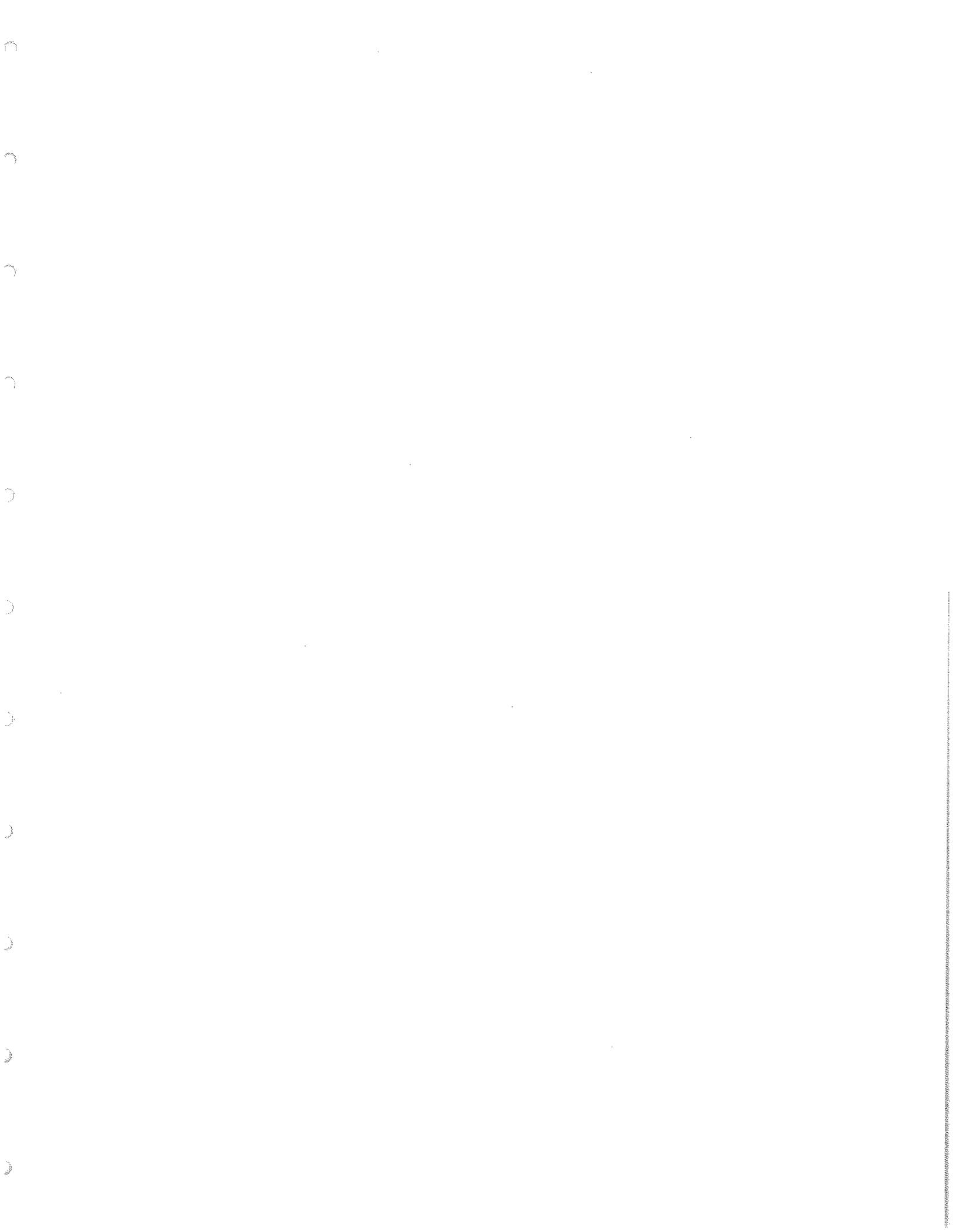
Very truly yours,



John C. Stump

JCS/bal  
Enclosures  
067780.00002





\$3,360,000

BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)

Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)

and

Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified)

ESCROW AGREEMENT FOR SERIES 1994 BONDS

This ESCROW AGREEMENT (the "Agreement"), made and entered into as of April 30, 2003, by and between BERKELEY COUNTY PUBLIC SERVICE DISTRICT (the "Issuer") and the WEST VIRGINIA MUNICIPAL BOND COMMISSION (the "Escrow Agent").

WITNESETH THAT:

WHEREAS, the Issuer, pursuant to a Bond Resolution passed on October 13, 1994 (the "1994 Resolution"), issued its Water Revenue Bonds, Series 1994 (the "Series 1994 Bonds"), in the original principal amount of \$2,275,000, dated September 1, 1994, of which \$1,835,000 is presently outstanding;

WHEREAS, the Issuer, pursuant to a Bond Resolution adopted on April 14, 2003 (the "Resolution"), authorized the issuance of its Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) (the "Series 2003 A Bonds"), in the original principal amount of \$1,330,000, dated April 1, 2003, and its Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified) (the "Series 2003 B Bonds"), in the original principal amount of \$2,030,000, dated April 1, 2003 (collectively, the "Series 2003 Bonds"), and contemporaneously with the issuance thereof, advance refund the Series 1994 Bonds and legally defease the Series 1994 Bonds by applying a portion of the proceeds of the Series 2003 Bonds and certain monies of the Issuer ("Issuer's Funds") to the purchase of obligations of the United States government to be deposited, together with certain cash amounts, in the Escrow Fund herein described;

WHEREAS, the Escrow Agent will cause to be purchased on behalf of the Issuer, with certain proceeds of the Series 2003 Bonds and Issuer's Funds, certain United States Treasury Obligations (the "Government Securities") described in the Verification Report, dated April 30, 2003, of AMTEC Tax-Exempt Compliance, attached hereto as EXHIBIT A (the "Verification Report");

WHEREAS, the Government Securities, plus cash amounts in the Escrow Fund which will be delivered to the Escrow Agent simultaneously with the delivery of the Series 2003 Bonds, are in such principal amount and mature and bear interest at such rates and are payable at such times and in such amounts as to insure the payment from time to time as due and on September 1, 2004 (the "Redemption Date"), of the entire principal amount of the Series 1994 Bonds then outstanding, together with the redemption premium and interest accrued thereon (collectively, the "Redemption Price");

WHEREAS, the Issuer has found it desirable to appoint the Escrow Agent and the Escrow Agent has agreed to such appointment for the purposes of holding title, as trustee, to the Government Securities, receiving payments of the principal thereof and interest thereon when due, disbursing to the Paying Agent such amounts as may be necessary to provide for payment of the Redemption Price of the Series 1994 Bonds on the Redemption Date and holding, investing and reinvesting any cash balances which may at any time not be needed for immediate disbursement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual agreements contained herein, and in order further to secure payment of the Series 1994 Bonds, as hereinabove provided, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

1. The Issuer hereby appoints the West Virginia Municipal Bond Commission as Escrow Agent for the Escrow Fund. The Escrow Agent hereby acknowledges receipt of true and correct copies of the 1994 Resolution and the Resolution, copies of which are made a part hereof and incorporated herein. Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Resolution.

2. There is hereby created and established with the Escrow Agent a special and irrevocable trust fund designated the "Escrow Fund", to be held in the custody of the Escrow Agent, separate and apart from any other funds of the Issuer or the Escrow Agent. The deposit of Government Securities and monies in the Escrow Fund shall constitute an irrevocable deposit of said securities and monies in trust for, and such securities and monies, together with any income or interest earned thereon, shall be applied, except as otherwise provided herein, to the payment of the Redemption Price on the Redemption Date, all in accordance with paragraph 4 hereof.

3. [RESERVED]

4. Currently with the delivery of the Series 2003 Bonds, the Issuer and the Escrow Agent shall cause (i) Series 2003 Bonds proceeds in the amount of \$1,887,790.10, and (ii) the monies in the Series 1994 Bonds Reserve Account in the amount of \$119,568 (total of \$2,007,358.10) to be deposited in the Escrow Fund, and thereupon \$2,006,359.35 to be applied to the purchase of the Government Securities and to hold the remaining \$998.75 as cash, uninvested, in the Escrow Fund. Maturing principal and interest (together with reinvestment proceeds thereof) of the Government Securities and the uninvested cash in the Escrow Fund shall be applied solely to the payment of the Series 1994 Bonds. AMTEC Tax-Exempt Compliance has certified, in its Verification Report, attached hereto as EXHIBIT A, that the Government Securities, together with the income to be derived therefrom and the uninvested cash in the Escrow Fund will be sufficient to pay the principal of and interest on the Series 1994 Bonds from time to time as due and on the Redemption Date, the Redemption Price. The Issuer hereby authorizes and directs the Escrow Agent to subscribe to the purchase of the Government Securities.

5. The Escrow Agent shall have no authority to reinvest funds or make substitutions of the Government Securities acquired hereunder under this agreement except as follows:

If requested by the Issuer, and upon receipt of an opinion of nationally recognized bond counsel that such substitution will not affect the tax-exempt status of interest on the Series 1994 Bonds or the Series 2003 Bonds under the Internal Revenue Code of 1986, as amended and then in effect (the "Code"), the Escrow Agent may substitute other United States Treasury Obligations for the Government Securities, provided that such United States Treasury Obligations being substituted must be non-callable obligations of the United States of America ("Direct Obligations"), must be sufficient to pay from time to time as due and on the Redemption Date, the Redemption Price, and provided further, that the Escrow Agent receives verification by a Certified Public Accountant of the sufficiency of the escrowed securities to make such payments.

6. The Paying Agent will request the Registrar of the Series 1994 Bonds to provide a notice of redemption by registered or certified mail to the registered owners of the Series 1994 Bonds and any bond insurer of the Series 1994 Bonds not more than 60 days nor less than 30 days prior to the Redemption Date, in accordance with the requirements of the 1994 Resolution.

7. The holders of the Series 1994 Bonds shall have an express lien on all monies and assets in the Escrow Fund until paid out, used and applied in accordance with this Agreement.

8. After the provision for payment of all the Outstanding Series 1994 Bonds, the redemption premium and the interest thereon, any amounts remaining in the Escrow Fund shall be immediately transferred to the Issuer and applied to the next ensuing interest payment on the Series 2003 Bonds.

9. The Escrow Agent shall be entitled to fees for services rendered under this Agreement and reasonable expenses. The Issuer shall pay those fees and expenses from its own funds. In no event shall the Escrow Agent or any paying agent have any lien whatsoever upon any of the monies or assets in the Escrow Fund for the payment of any fees or expenses.

10. The Issuer and the Escrow Agent independently hereby covenant that no part of the monies or funds at any time in the Escrow Fund shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 1994 Bonds or the Series 2003 Bonds to be an "arbitrage bond" as defined in Section 148 of the Code, or to be subject to treatment under Section 148 as an obligation not described in Section 103 of the Code.

11. The Escrow Agent shall not have any responsibility with respect to the sufficiency of this Agreement to effect payment, redemption or defeasance of the Series 1994 Bonds. The liability of the Escrow Agent for the payment of the principal of and the interest, including any redemption premium, on the Series 1994 Bonds shall be limited to the application of the monies and assets available for such purposes in the Escrow Fund, and the Escrow Agent shall not be liable or responsible because of the failure of the Issuer to perform any act required of it by this Agreement. The Escrow Agent shall have no responsibility to the Issuer or any other person in connection with this Agreement, except as specifically provided herein, and shall not be responsible for anything done or omitted to be done by it except for its own negligence or willful default in the performance of any obligation imposed on it hereunder.

12. By execution of this Agreement, the Escrow Agent accepts the duties and obligations as Escrow Agent hereunder. The Escrow Agent represents that it has all requisite power, and has taken all action necessary to execute the trusts hereby created.

13. If the Escrow Agent is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the Issuer or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the Issuer, at any time. The Escrow Agent may request an opinion of counsel for a determination of any legal issue which might arise in the performance of its duties hereunder and may act in accordance with the advice given in such opinion.

14. The Escrow Agent shall not be liable for any loss resulting from any investment made pursuant to the terms and provisions of this Agreement.

15. The Escrow Agent may act upon any notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other instrument or document which the Escrow Agent in good faith believes to be genuine and correct and to have been signed or sent by the proper person or persons.

16. The Escrow Agent may resign or be removed by the Issuer, and thereby become discharged from the trusts hereby created, by notice given to the Issuer and each insurer of any of the Series 1994 Bonds not less than thirty (30) days before such resignation or removal shall take effect. Such resignation or removal shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the trusts hereby created. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the funds held hereunder transferred. The Escrow Agent shall provide a proper accounting to the Issuer of all funds deposited pursuant to this Agreement within 30 days of the appointment of a successor Escrow Agent. If no such appointment has been made at the end of the 30 day period, the Escrow Agent may petition a court of competent jurisdiction for appointment of a successor or temporary Escrow Agent. In the event of the resignation or removal of the Escrow Agent, the Escrow Agent shall rebate to the Issuer any fees theretofore paid in advance by the Issuer to the Escrow Agent for its services under this Agreement.

17. This Agreement is made for the benefit of the Issuer, the Escrow Agent and the holders from time to time of the Series 1994 Bonds, except as otherwise expressly provided herein. This Agreement may be modified or amended at anytime, provided, however, that no such modification or amendment shall be made which would materially adversely affect the interest of any of the holders of the Series 1994 Bonds.

18. If any of the Outstanding Series 1994 Bonds are not presented for payment on the Redemption Date, and monies are held by the Escrow Agent for payment thereof, but not including any funds held by the paying agent for the Series 1994 Bonds, such monies shall be held for such purposes for a period of one year from the date such payment was due, at which time such monies shall be paid to the Issuer. Following such payment to the Issuer, the Issuer shall be responsible for payment to any holder of the Series 1994 Bonds presenting the Series 1994 Bonds to the Escrow Agent of the amount payable to such holder.

19. The Escrow Agent shall act on behalf of the Issuer in the conduct of the proceedings for the redemption of the Outstanding Series 1994 Bonds to be redeemed in accordance with the 1994 Resolution and the Resolution.

20. This Agreement shall terminate on the earlier of the date on which all the Outstanding Series 1994 Bonds have been paid in full and discharged in accordance with the respective provisions of the 1994 Resolution and the Resolution or, as described in Paragraph 18 above, one year after the last date on which payment on the Series 1994 Bonds is due, and at such time the balance of the Escrow Fund shall be transferred to the Issuer.

21. If any one or more of the covenants or agreements provided in this Agreement to be performed on the part of any of the parties hereto should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

22. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

23. This Agreement is made in the State of West Virginia under the Constitution and laws of such state and is to be so construed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement  
on the day and year first above written.

BERKELEY COUNTY PUBLIC SERVICE  
DISTRICT



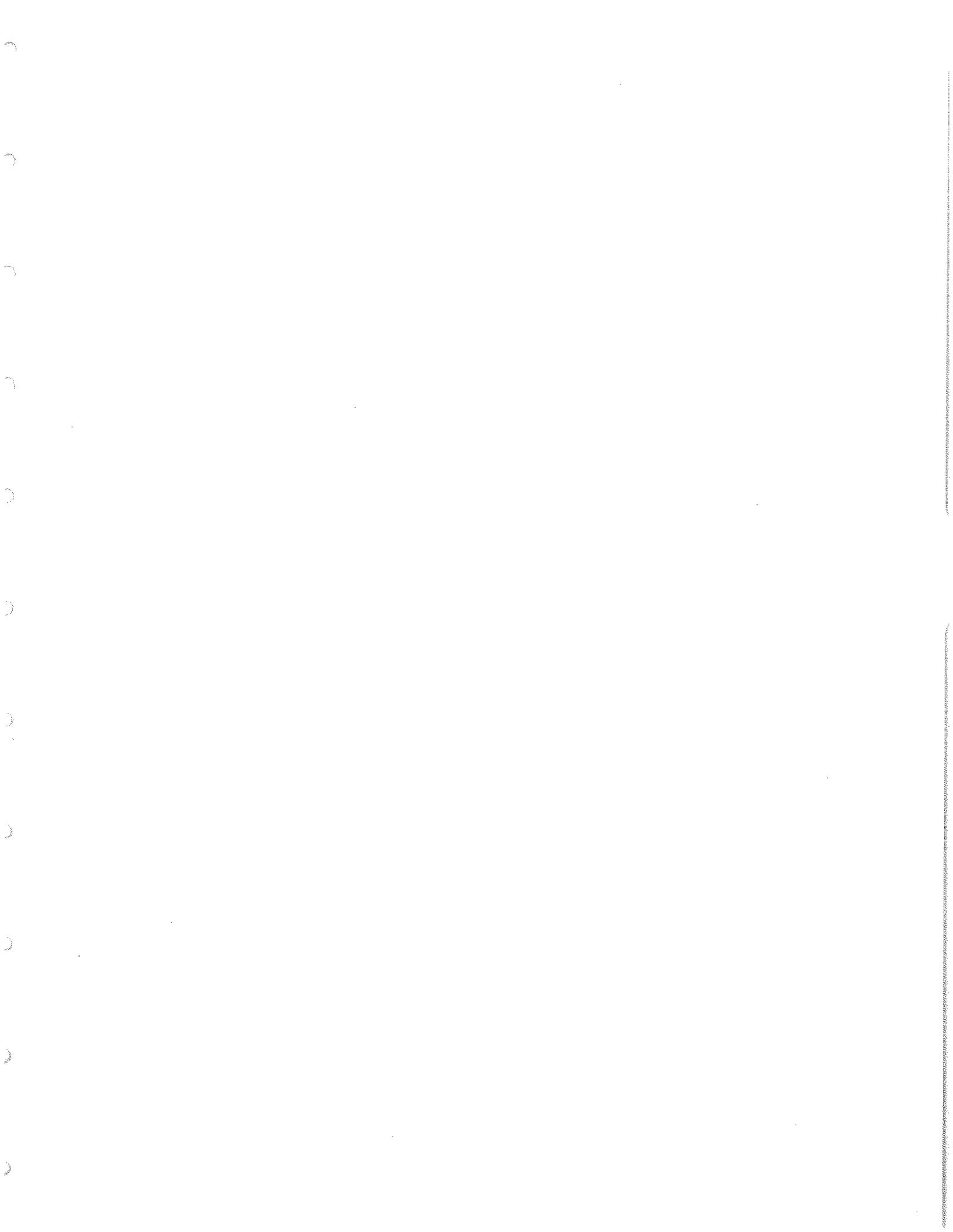
Chairman

WEST VIRGINIA MUNICIPAL BOND  
COMMISSION



Executive Director

04/27/03  
067780/00002



R | S | A

April 28, 2003

VIA OVERNIGHT COURIER

R. Witter Hallan, Executive Director  
West Virginia Municipal Bond Commission  
8 Capital Street  
Charleston, WV 25301

RE: \$1,330,000 Berkeley County Public Service Water Refunding Revenue Bonds,  
Series 2003A;

\$2,030,000 Berkeley County Public Service Water Refunding Revenue Bonds,  
Series 2003B

Dear Mr. Hallan:

Enclosed herewith are certain schedules in connection with the above-referenced Series of Bonds which are scheduled for delivery on April 30, 2003. The Bonds are being issued to refund the District's outstanding BCPSWD Series 1993A and BCPSWD Series 1994 Bonds (the "Prior Bonds").

The Bonds will be cleared through the Depository Trust Company (DTC). Ross, Sinclaire & Associates (RSA), as Underwriter, has made an application to DTC to qualify the issue. Melissa Seidt, closing coordinator with our Firm, will contact you on the date of closing to confirm receipt of the correct Proceeds amount and advise DTC via a conference call to release the Bond certificates.

Proceeds of the Bonds will be distributed in the form of two wires: (1) \$3,217,790.10 to the WVMB as Paying/Escrow Agent and (2) \$92,016.94 to the Cost of Issuance Bank.

As the Paying Agent you will then distribute the following sources of funds in the amounts listed below to the appropriate Bond Funds on the closing date:

**Sources:**

Portion of Series 2003A & 2003B Proceeds	\$3,217,790.10
Series 1993A DSR Fund Principal Amount	\$291,060.00
Series 1993A Sinking Fund - March 2003 Payment	\$24,019.17
Series 1994 DSR Fund	\$177,147.50
Series 1994 Sinking Fund - March 2003 Payment	\$14,623.96
Total:	<u>\$3,724,640.73</u>

**Uses:**

Deposit Escrow Beginning Cash to Escrow Fund	\$1,709.64
Deposit Escrow Securities Purchase Price to Escrow Fund	\$3,354,956.53
Deposit Accrued & Portion of Series 1993A Sinking Fund Balance to Series 2003A Sinking Fund	\$26,335.95
Deposit Accrued, Contingency & Portion of Series 1994 Sinking Fund Balance to Series 2003B Sinking Fund	\$21,816.15
Fund Series 2003A & 2003B Combined DSR Fund	<u>\$319,822.46</u>
Totals:	<u>\$3,724,640.73</u>

400 Democrat Drive  
Frankfort, KY  
40601

502/695-7353  
fax: 502/695-2897

INVESTMENT  
BANKING

FINANCIAL  
ADVISORY

PUBLIC  
FINANCE

BROKERAGE  
SERVICES

36 E. 7th St.  
Suite 1550  
Cincinnati, OH  
45202

513/381-3939  
fax: 513/381-0124

315 N. 9th St.  
Mayfield, KY  
42066

270/247-4012  
fax: 270/247-0700

1900 Envoy Circle  
Suite 1920  
Louisville, KY  
40299

502/491-3939  
fax: 502/491-9979

SIPC

NASD  
MEMBER FIRM

F S A

As Escrow Agent, you will then purchase the required securities to defease the Prior Bonds as presented on pages 21 and 30 of the enclosed schedules. The security provider is Dolphin & Bradbury, Inc. and your contact is Daniel C. Kluger at (800) 220-2663. Wiring instructions for the purchase are listed below:

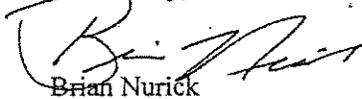
Bank of New York / FCCORP  
DTC # 0141  
ABA # 021000018  
Account No. 1504-7556

Upon the Purchase of the Securities the Prior Bonds will be defeased and no further payments from the District will be required. Rather, Proceeds from the Escrow Securities combined with the Beginning Cash Amount will then be used to pay any remaining payments on the Prior Bonds to their respective call dates. The cash flows of the Escrow for each of the Prior Series is presented on pages 23 and 32 of the enclosed schedules.

The District will then be making payments in accordance to the new payment schedules on page 13 and 16 of the enclosed schedules. A monthly breakdown of each Sinking Fund Cash Flows is depicted in the Master Sinking Fund Schedule as an attachment.

If you have any further questions concerning the schedules or the information above, please feel free to contact me at (800) 255-0795.

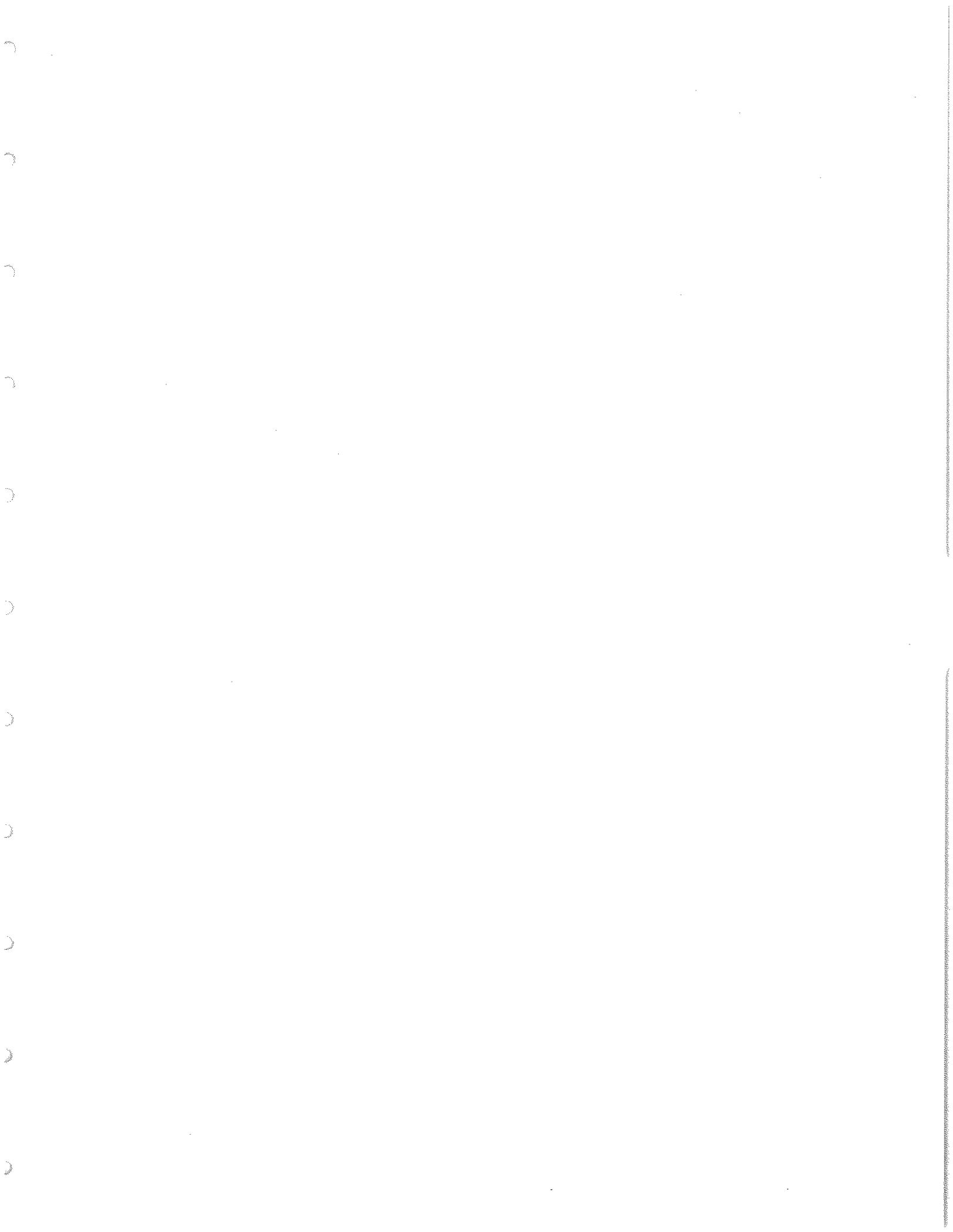
Yours truly,



Brian Nurick  
Senior Vice President

enclosure

cc: Paul Fisher, Executive Director  
Hoy Shingleton, Esquire  
Vincent A. Collins, Esquire  
John C. Stump, Esquire  
Samme Gee, Esquire  
David Decker, CPA  
Daniel C. Kluger, Senior Vice President  
Melissa Seidt, Closing Coordinator



\$3,360,000

BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)

Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)  
and  
Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified)

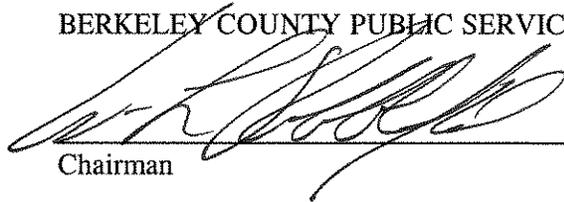
JOINT CERTIFICATE OF THE ISSUER AND ESCROW AGENT FOR  
BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 1994

The undersigned Chairman of BERKELEY COUNTY PUBLIC SERVICE DISTRICT, a public corporation, public service district and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), and the undersigned R. Witter Hallan, Executive Director of the WEST VIRGINIA MUNICIPAL BOND COMMISSION (the "Escrow Agent"), hereby jointly certify as follows in connection with the above-captioned Bond issue:

1. We have executed the Escrow Agreement between the Issuer and the Escrow Agent, dated April 30, 2003 (the "Escrow Agreement"), on behalf of the Issuer and the Escrow Agent, respectively.
2. The Escrow Agent has the authority to act as Escrow Agent for and in connection with the Series 1994 Bonds (defined under the Escrow Agreement) and has the requisite powers to carry out its duties under the Escrow Agreement, and the Escrow Agreement has been duly and validly authorized, executed and delivered by the Escrow Agent, and assuming due authorization, execution and delivery thereof by the Issuer, the Escrow Agreement constitutes a valid and legally binding obligation of the Escrow Agent, enforceable in accordance with its terms.
3. The funds on deposit in the Escrow Fund established by the Escrow Agreement have been invested as provided in the Escrow Agreement.
4. The invested funds are sufficient to fully pay the Series 1994 Bonds, including payment of the principal of, redemption premium and interest on the Series 1994 Bonds on September 1, 2004, and the liens of the Series 1994 Bonds and the ordinance pursuant to which the Series 1994 Bonds were issued have been discharged.

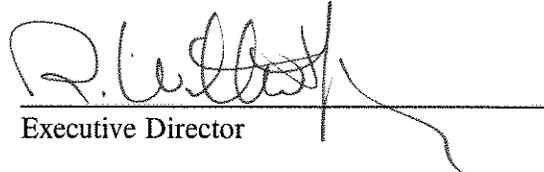
WITNESS our signatures on this 30th day of April, 2003.

BERKELEY COUNTY PUBLIC SERVICE DISTRICT



Chairman

WEST VIRGINIA MUNICIPAL BOND COMMISSION



Executive Director

04/27/03  
067780/00002



**BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
(West Virginia)**

**\$2,275,000  
WATER REVENUE BONDS, SERIES 1994**

**BOND RESOLUTION**

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BERKELEY COUNTY PUBLIC SERVICE DISTRICT

A RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE EXISTING PUBLIC WATERWORKS SYSTEM OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT, OF ITS WATER REVENUE BONDS, SERIES 1994, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$2,275,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE DISTRICT, SHALL BE EXPENDED FOR SUCH PURPOSE, TO FUND A RESERVE FOR THE BONDS, AND TO PAY COSTS AND EXPENSES IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, Berkeley County Public Service District (the "Issuer") is a public service district and political subdivision of the State of West Virginia in Berkeley County of said State, duly created pursuant to Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act") by The County Commission of Berkeley County;

WHEREAS, the Issuer presently owns and operates a public waterworks system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, extensions and improvements thereto by the issuance of bonds or other obligations of which there are presently Outstanding the Series 1993 A Bonds (as hereinafter defined), and desires to finance and acquire, construct, operate and maintain certain additional public service properties consisting of additions, betterments and improvements for such existing waterworks facilities with all appurtenant facilities, within the boundaries of the Issuer to be owned and operated by the Issuer;

WHEREAS, under the provisions of the Act, the Issuer is authorized and empowered to construct, acquire and operate additions, betterments and improvements for the System and to issue revenue bonds to finance the same;

WHEREAS, it is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be acquired and constructed such additions, betterments and improvements, consisting generally of two new storage tanks, water mains, hydrants, a new wellhouse, well improvements, chlorination facilities and related water system improvements, and all necessary appurtenant facilities (the "Project"); particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer and that the Project be financed through the issuance of the Issuer's water revenue bonds, as hereinafter set forth. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity;

WHEREAS, it is necessary for the Issuer to issue its revenue bonds in the aggregate principal amount of \$2,275,000 to permanently finance the costs of such acquisition and construction in the manner hereinafter provided; and

WHEREAS, the Issuer now desires to authorize the acquisition and construction of the Project as aforesaid, and to provide for the financing thereof by the issuance of its revenue bonds as hereinafter provided;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT:

## ARTICLE I

### DEFINITIONS; STATUTORY AUTHORITY; FINDINGS

Section 1.01. Definitions. All capitalized terms used in this Resolution and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Series 1994 Bonds.

"AMBAC Indemnity" means AMBAC Indemnity Corporation, a Wisconsin-domiciled stock insurance company.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer and Redemption Digest.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any temporary Chairman duly appointed by the Governing Body.

"Bond Commission" or "Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer or the Governing Body, and shall initially mean Steptoe & Johnson, Clarksburg, West Virginia.

"Bondholder," "Holder of the Bonds," "Owner of the Bonds," "Registered Owner" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" or "Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds, and with respect to the Series 1994 Bonds, shall initially mean AMBAC Indemnity Corporation.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"Bond Year" means the 12 month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year except that the first Bond Year shall begin on the Closing Date.

"Bonds" means, collectively, the Series 1994 Bonds, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1994 Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM, attached hereto.

"Chairman" means the Chairman of the Governing Body of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1994 Bonds for the proceeds representing the purchase price thereof.

"Code" means the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Connection Fees" means the fees, if any, paid by customers of the System in order to connect thereto.

"Consulting Engineer" means Dewberry & Davis, Fairfax, Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Costs", "Project Costs" or similar terms, means all costs of acquisition, construction and equipping of any project, including the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during construction or acquisition and for not more than 6 months after completion of construction of any such project; amounts which may be deposited in the Reserve Account; engineering, legal and accounting expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of any such project, premiums for municipal bond insurance and reserve account insurance, letter of credit fees, fiscal agent fees and expenses, underwriter's discount, initial fees for the services of registrars, paying agents, depositories, trustees or escrow trustees, or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of any such project and the placing of same in operation, and the performance of the things herein required or permitted, in

connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed allowable Costs.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Debt Service," with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

"Depository Bank" means F & M Bank - Martinsburg, Martinsburg, West Virginia, a bank or trust company which is a member of FDIC (herein defined), and its successors and assigns.

"District" or "Issuer" means Berkeley County Public Service District, in Berkeley County, West Virginia, a public corporation, political subdivision and public utility of the State of West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body.

"DTC-eligible" means, with respect to the Series 1994 Bonds, meeting the qualifications prescribed by The Depository Trust Company, New York, New York.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the last day of the next succeeding June 30.

"Governing Body," "Board" or "Public Service Board" means the public service board of the Issuer, as may hereafter be constituted.

"Government Obligations" means direct and general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury).

"Gross Revenues" or "Revenues" means the aggregate gross operating and non-operating revenues of the System determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, but does not include any gains from the sale or other disposition of or from any increase in the value of capital assets (including Qualified Investments), amounts received due to an award of grant moneys or proceeds of any

condemnation or insurance award. The terms "Revenues" or "Gross Revenues" shall include but not be limited to the Net Revenues.

"Independent Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Interest Payment Date" means March 1 and September 1 of each year, commencing March 1, 1995.

"Issuer" or "District" means Berkeley County Public Service District, in Berkeley County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Fiscal Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy issued by AMBAC Indemnity insuring the payment when due of the principal of and interest on the Series 1994 Bonds as provided therein.

"Net Proceeds" means the face amount of the Series 1994 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Account.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Operating Expenses," unless qualified, means the reasonable current expenses, paid or accrued, of operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Registrar, the Depository Bank and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Prior Bonds or the Bonds, charges for depreciation, losses from the sale or other disposition

of or any decrease in the value of capital assets, expenses relating to grant procurement, expenses funded from capital reserves to pay extraordinary operating, repair or maintenance expenses, expenses that are normally charged to fixed capital accounts under generally accepted accounting principles, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund provided for in Section 4.01 hereof.

"Original Purchaser" means Ferris, Baker Watts, Incorporated, Baltimore, Maryland, as the purchaser of the Series 1994 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 1994 Bonds with interest rates and other terms allowable under the Act, such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 1994 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 1994 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said Supplemental Resolution to be adopted by the Governing Body at the time of approval of such sale of said Series 1994 Bonds.

"Outstanding," when used with reference to Bonds or Series 1994 Bonds and as of any particular date, describes all Bonds or Series 1994 Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Series 1994 Bond canceled by the registrar for such Bond or Series 1994 Bond at or prior to said date; (b) any Bond or Series 1994 Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this or the Series 1994 Bonds Resolution and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar and any other paying agent for the Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined

in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain additions, betterments and improvements for the System, consisting generally of two new storage tanks, water mains, hydrants, a new wellhouse, well improvements, chlorination facilities and related water system improvements, and all necessary appurtenant facilities.

"Qualified Investments" means and includes any of the following:

A. The following obligations are Qualified Investments for all purposes, including defeasance investments in refunding escrow accounts:

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below), or
- (2) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

B. The following obligations are Qualified Investments for all purposes other than defeasance investments in refunding escrow accounts:

(1) obligations of any of the following federal agencies, which obligations represent the full faith and credit of the United States of America, including:

- Export-Import Bank
- Farm Credit System
- Financial Assistance Corporation
- Farmers Home Administration
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration;

(2) senior debt obligations rated "AAA" by Standard & Poor's Corporation and "Aaa" By Moody's Investors Service issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Senior debt obligations of other Government Sponsored Agencies approved by AMBAC Indemnity;

- (3) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's Corporation and "P-1" by Moody's Investors Service and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);
- (4) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's Corporation and "P-1" by Moody's Investors Service and which matures not more than 270 days after the date of purchase;
- (5) investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation;
- (6) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and
  - (A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service, Inc. or any successors thereto; or
  - (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of an interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;
- (7) investment agreements approved in writing by AMBAC Indemnity Corporation [supported by appropriate opinions of counsel] with notice to Standard & Poor's Corporation;

(8) any State-administered pool investment fund in which the Issuer is statutorily permitted or required to invest; and

(9) other forms of investments (including repurchase agreements) approved in writing by AMBAC Indemnity with notice to Standard & Poor's Corporation.

C. The value of the above investments shall be determined as follows:

"Value", which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

(1) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(2) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(3) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(4) as to any investment not specified above: the value thereof established by prior agreement between the Issuer and AMBAC Indemnity Corporation.

"Rebate Fund" means the Rebate Fund created by Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated or defined in the Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Account" means the Redemption Account created in the Sinking Fund by Section 4.03 hereof.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to effect such redemption and the interest accrued thereon to the Redemption Date.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954, as amended.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund provided for in Section 4.01 hereof.

"Reserve Account" means the Reserve Account for the Series 1994 Bonds created in the Sinking Fund by Section 4.02 hereof.

"Reserve Account Requirement" means, as of any date of calculation, Maximum Annual Debt Service on the Series 1994 Bonds, the Series 1993 A Bonds and any Bonds issued on a parity therewith, provided that such amount shall not exceed the lesser of (i) ten percent of the Issue Price (as defined in the Code) of such series of Bonds, (ii) one hundred percent of Maximum Annual Debt Service on such series of Bonds or (iii) one hundred twenty-five percent of average annual debt service on such series of Bonds.

"Resolution," regardless of whether preceded by the article "the" or "this," means this Resolution, as it may hereafter from time to time be amended or supplemented.

"Revenue Fund" means the Revenue Fund provided for in Section 4.01 hereof.

"Secretary" means the Secretary of the Governing Body of the Issuer.

"Series 1994 Bonds" means the Water Revenue Bonds, Series 1994, of the Issuer, originally authorized to be issued pursuant to this Resolution and the Supplemental Resolution.

"Series 1994 Bonds Sinking Fund" means the Series 1994 Bonds Sinking Fund created by Section 4.02 hereof.

"Series 1993 A Bonds" means the Water Refunding Revenue Bonds, Series 1993 A, of the Issuer, dated March 1, 1993, originally issued in the aggregate principal amount of \$3,350,000.

"Series 1993 A Bonds Resolution" means the resolution and supplemental resolution adopted by the Issuer on March 4, 1993, pursuant to which the Series 1993 A Bonds were issued.

"Series 1993 A Bonds Sinking Fund" means the Series 1993 A Bonds Sinking Fund created by the Series 1993 A Bonds Resolution and continued by Section 4.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 1994 Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system, including the Project, and shall also include any further additions, betterments, extensions, improvements or other facilities at any time acquired or constructed for the waterworks system of the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

Reference to any account or fund created hereunder shall include accounts or funds continued hereby, whether expressly so provided or not.

Section 1.02.      Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03.      Findings. It is hereby found, determined and declared as follows:

- A. The Issuer is a public corporation, political subdivision and public utility of the State of West Virginia in Berkeley County of said State.
- B. The Issuer now has a public waterworks system and desires to finance and acquire, construct, operate and maintain certain additional public service properties consisting of additions, betterments and improvements for such existing waterworks facilities with all appurtenant facilities, within the boundaries of the Issuer to be owned and operated by the Issuer.
- C. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be acquired and constructed the Project, particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Secretary of the Public Service Board of the Issuer. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.
- D. The estimated maximum cost of the acquisition and construction of the Project is \$1,963,752, which will be obtained from the proceeds of sale of the Series 1994 Bonds herein authorized.
- E. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Series 1993 A Bonds and the Series 1994 Bonds and all debt service, reserve account and other payments provided for herein.
- F. It is in the best interests of the Issuer, and the residents thereof, that the Issuer issue the Series 1994 Bonds and secure the Series 1994 Bonds by a pledge and assignment of the Net Revenues derived from the operation of the System, the moneys and securities in the Series 1994 Bonds Reserve Account, unexpended proceeds of the Series 1994 Bonds and as further set forth herein.
- G. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. There are Outstanding obligations of the Issuer which will be on a parity with the Series 1994 Bonds as to liens, pledge and source of and security for payment, being the Series 1993 A Bonds. There are no other outstanding bonds or obligations of the Issuer which will rank prior to, on a parity with or subordinate to the Series 1994 Bonds as to liens, pledge and/or source of and security for payment.

I. The Series 1994 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in EXHIBIT A - BOND FORM, attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Resolution or a Supplemental Resolution or as deemed necessary by the Registrar, the Original Purchaser or the Issuer.

J. All things necessary to make the Series 1994 Bonds, when authenticated by the Registrar and issued as in this Resolution provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 1994 Bonds, will be timely done and duly performed.

K. The adoption of this Resolution, and the execution and issuance of the Series 1994 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

L. The Issuer has complied with all requirements of law relating to the authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 1994 Bonds, or will have so complied prior to issuance of the Series 1994 Bonds, including among other things and without limitation, the consent and approval, pursuant to the Act and other applicable provisions of law, of the issuance of the Series 1994 Bonds, the acquisition and construction of the Project and the imposition of rates and charges by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or have been waived by all appropriate parties.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall own or hold the same from time to time, this Resolution and the provisions hereof shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND  
CONSTRUCTION OF THE PROJECT

Section 2.01.      Authorization of Acquisition and Construction of the Project.  
There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$1,963,752, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

## ARTICLE III

### THE BONDS

Section 3.01. Form and Payment of Bonds. No Bond shall be issued pursuant to this Resolution except as provided in this Article III. Any Bonds issued pursuant to this Resolution, may be issued only as fully registered Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity. All Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable Interest Payment Date or on such Interest Payment Date, from such Interest Payment Date or, if no interest on such Bonds has been paid, from the date thereof; or, if and to the extent that the Issuer shall have defaulted in the payment of interest on any Interest Payment Date, then from the most recent Interest Payment Date to which interest has been paid or duly provided for.

The principal of and the premium, if any, on the Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$500,000 or more of the Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Chairman, by his or her manual or facsimile signature, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold

the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference with respect to the Series 1994 Bonds, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for registration and transfer set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State.

So long as any of the Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the

event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Bonds that have been called for redemption.

Section 3.05.      Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Net Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06.      Term Bonds. In the event Term Bonds are issued pursuant to this Resolution, the following provisions shall apply:

A.      The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Redemption Account in accordance with Section 4.03 shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory

Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Resolution. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10.      Series 1994 Bonds. For the purposes of paying Costs of the Project, funding the Reserve Account or portion thereof and paying costs of issuance thereof, there shall be issued the Series 1994 Bonds of the Issuer, in an aggregate principal amount of not more than \$2,275,000. Said Series 1994 Bonds shall be designated, "Water Revenue Bonds, Series 1994" and shall be issued in fully registered form, in denominations of \$5,000 or any integral multiple thereof for any year of maturity, not exceeding the aggregate principal amount of Series 1994 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 1994 Bonds shall be numbered from R-1 consecutively upward. The Series 1994 Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable semiannually on such dates; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the Issuer shall prescribe herein and in the Supplemental Resolution.

Section 3.11.      Delivery of Series 1994 Bonds. The Issuer shall execute and deliver the Series 1994 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 1994 Bonds to the Original Purchaser upon receipt of the documents set forth below:

- (A) A list of the names in which the Series 1994 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;
- (B) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1994 Bonds to the Original Purchaser;
- (C) Copies of this Resolution and the Supplemental Resolution, certified by the Secretary;
- (D) The unqualified approving opinion upon the Series 1994 Bonds by Bond Counsel; and
- (E) The Municipal Bond Insurance Policy or a copy thereof.

Section 3.12.      Form of Series 1994 Bonds. The definitive Series 1994 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 1994 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval. The definitive Series 1994 Bonds shall have the form of the opinion of Steptoe & Johnson, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.13.      Disposition of Proceeds of Series 1994 Bonds. Upon the issuance and delivery of the Series 1994 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1994 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Sinking Fund and applied to payment of interest on the Series 1994 Bonds at the first Interest Payment Date.

B. The amount of Series 1994 Bond Proceeds which, together with other moneys or securities of the Issuer, are equal to the Reserve Account Requirement, shall be remitted to the Bond Commission for deposit in the Reserve Account, provided that, to the extent the Reserve Account Requirement is satisfied in whole or in part from other funds of the Issuer, Series 1994 Bond Proceeds shall be deposited in the Reserve Account only to the extent needed to satisfy the balance of the Reserve Account Requirement.

C. The amount of Series 1994 Bonds proceeds sufficient to pay all costs of issuance of the Series 1994 Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1994 Bonds at the written direction of the Issuer. Moneys not to be applied immediately to pay such costs of issuance may be invested in accordance with this Resolution, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose, such unapplied proceeds shall be transferred by the Issuer to the Series 1994 Bonds Redemption Account established by Section 4.02 hereof. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Holders of the Series 1994 Bonds from which such proceeds are derived.

D. The balance of the proceeds of the Bonds shall be deposited in the Construction Fund and applied to payment of Costs of the Project in accordance with Section 3.15 hereof.

Section 3.14.      Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly. Disbursements from the Construction Fund (except for payment of costs of issuance of the Series 1994 Bonds in excess of the moneys

available in the Costs of Issuance Fund and fees and expenses of the Consulting Engineer which shall be made upon request of the Issuer) shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer, stating:

- (A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (C) That each of such costs has been otherwise properly incurred; and
- (D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Fund.

Pending such application, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineer, the Depository Bank shall transfer any moneys remaining in the Construction Fund to the Series 1994 Bonds Redemption Account, to be applied to redemption of the Series 1994 Bonds at the earliest redemption date thereof.

## ARTICLE IV

### SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 4.01.      Establishment of Funds and Accounts with Depository Bank.

Pursuant to this Article IV, the following separate and special funds are created and established with (or continued if previously established by the Series 1993 A Bonds Resolution), and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other (except as set forth in this Section 4.01) and used solely for the purposes provided herein:

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Costs of Issuance Fund;
- (5) Rebate Fund; and
- (6) Construction Fund.

Section 4.02.      Establishment of Funds and Accounts with Bond Commission.

Pursuant to this Article IV, the following special funds and accounts are hereby created and established (or continued if previously established by the Series 1993 A Bonds Resolution), with and shall be held by the Bond Commission:

- (1) Series 1993 A Bonds Sinking Fund;
  - (a) Within the Series 1993 A Bonds Sinking Fund:
    - (i) Series 1993 A Bonds Reserve Account; and
    - (ii) Series 1993 A Bonds Redemption Account.
- (2) Series 1994 Bonds Sinking Fund;
  - (a) Within the Series 1994 Bonds Sinking Fund:
    - (i) Series 1994 Bonds Reserve Account; and
    - (ii) Series 1994 Bonds Redemption Account.

Section 4.03. System Revenues and Application Thereof. So long as any of the Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Resolution. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, on the first day of each month, each month, transfer from the Revenue Fund and deposit into the Operation and Maintenance Fund, an amount sufficient to pay the current Operating Expenses of the System.

(2) The Issuer shall next, from the moneys remaining in the Revenue Fund, (i) on the first day of each month, transfer from the Revenue Fund and pay to the Bond Commission the amounts required by the Series 1993 A Bonds Resolution to be deposited in the Series 1993 A Bonds Sinking Fund for payment of principal of and interest on the Series 1993 A Bonds, (ii) simultaneously therewith, on the first day of each month, beginning on the first day of that month which is 6 months prior to the first interest payment date on the Series 1994 Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission, for deposit in the Series 1994 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1994 Bonds on the next ensuing semiannual interest payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 1994 Bonds Sinking Fund and the next ensuing semiannual interest payment date is more than or less than 6 months, then such monthly payments shall be decreased or increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date, and provided further, that the initial amount required to be transferred from the Revenue Fund and deposited in the Series 1994 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 1994 Bonds deposited therein and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 1994 Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 1994 Bonds Sinking Fund, and (iii) simultaneously therewith, remit to the Bond Commission for deposit in the Series 1994 Bonds Sinking Fund, and in the Series 1994 Bonds Redemption Account therein in the case of Term Bonds which are to be redeemed, on the first day of each month, beginning on the first day of

that month which is 12 months prior to the first principal payment or mandatory redemption date of the Series 1994 Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 1994 Bonds on the next ensuing principal payment or mandatory redemption date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 1994 Bonds Sinking Fund and the next ensuing principal payment or mandatory redemption date is more or less than 12 months, then such monthly payments shall be decreased or increased proportionately to provide, one month prior to the next ensuing principal payment date or mandatory redemption date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 1994 Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

(3) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, (i) on the first day of each month, transfer from the Revenue Fund and pay to the Bond Commission the amounts, if any, required by the Series 1993 A Bonds Resolution to be deposited in the Series 1993 A Bonds Reserve Account, and (ii) simultaneously therewith, on the first day of each month, apply such moneys, to the full extent necessary, for deposit into the Series 1994 Bonds Reserve Account beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 1994 Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 1994 Bonds Reserve Account is less than the Reserve Account Requirement, or (b) amounts have been withdrawn from the Series 1994 Bonds Reserve Account, for deposit into the Series 1994 Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be sufficient to restore the amount of moneys on deposit in the Series 1994 Bonds Reserve Account to an amount equal to the Reserve Account Requirement; provided, that in no event shall the amount deposited into the Series 1994 Bonds Reserve Account in any month be less than, in the event the deficiency in the Reserve Account Requirement is due to a decrease in the value of the Qualified Investments therein in excess of 10% of such amount, an amount equal to not less than 1/4th of the amount of such deficiency, and otherwise, an amount equal to not less than 1/12th of the amount of the deficiency in the Series 1994 Bonds Reserve Account determined as set forth in clause (a) above and the amount then withdrawn from the Reserve Account (it being understood that any such 1/12th payment shall be made in such amount for

12 consecutive months unless the amount in the Series 1994 Bonds Reserve Account shall have been made equal to the Reserve Account Requirement prior to such twelfth consecutive month) subject to the provisions of Section 5.01(C) hereof; and provided further, that no payments shall be required to be made into the Series 1994 Bonds Reserve Account whenever and as long as the amount on deposit therein shall be equal to the Reserve Account Requirement.

(4) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the prior month's Gross Revenues. No further payments shall be required to be made into the Renewal and Replacement Fund when there shall have been deposited therein, and so long as there shall remain on deposit therein, the sum of \$250,000.

(5) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, accrue the surplus then remaining in the Revenue Fund and if there is a balance in the Revenue Fund in excess of the estimated amounts to be paid into the Operation and Maintenance Fund and the Sinking Fund during the succeeding 3 months, such excess may be withdrawn and paid into the Renewal and Replacement Fund or used for the purchase or retirement prior to maturity of Bonds.

(6) If on any monthly payment date the Gross Revenues are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

B. The Issuer shall not be required to make any further payments into the Series 1994 Bonds Sinking Fund when the aggregate amount of funds in the Series 1994 Bonds Sinking Fund, including the Series 1994 Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 1994 Bonds issued pursuant to this Resolution then Outstanding, plus the amount of interest due or thereafter to become due on the Series 1994 Bonds then Outstanding.

C. As and when additional Bonds ranking on a parity with the Series 1994 Bonds are issued, provision shall be made for additional payments into the Series 1994 Bonds Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at or before maturity in accordance with the provisions hereof and to accumulate a balance in the Series 1994 Bonds Reserve Account in an

amount equal to the maximum provided and required to be paid into the Series 1994 Bonds Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from the Series 1994 Bonds Sinking Fund.

D. The payments into the several Sinking Funds shall be made on the first day of each month, except that, when the first day of any month shall be a Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

E. The Issuer shall restore any withdrawals from the Series 1994 Bonds Reserve Account which have the effect of reducing the assets therein below the Reserve Account Requirement from the first Net Revenues available after all other required payments to the Series 1994 Bonds Sinking Fund, including any deficiencies for prior payments, have been made in full; provided, that the Issuer shall not be required to restore such deficiency when the aggregate amount of funds in the Series 1994 Bonds Sinking Fund, including the Series 1994 Bonds Reserve Account therein, is at least equal to the aggregate amount of Series 1994 Bonds issued pursuant to this Resolution then Outstanding, plus the amount of interest due or thereafter to become due on said Series 1994 Bonds then Outstanding.

F. Withdrawals and disbursements may be made by the Issuer from the Renewal and Replacement Fund only for the following purposes:

(a) To make up any deficiency in the several Reserve Accounts (so that the amount on deposit therein is at least equal to the Reserve Account Requirement);

(b) For the payment of the principal (including the principal amount to be paid under the mandatory redemption schedules) of or interest on the Bonds, but only in the event that at the time of such withdrawal there are not sufficient funds for such purpose in the several Sinking Funds (including the Reserve Accounts therein);

(c) For the payment of the reasonable costs of land and depreciable renewals, repairs, extensions, improvements and additions to the System;

(d) For the payment of debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such land and depreciable renewals, repairs, extensions, improvements and additions to the System; or

(e) To meet payment of Operating Expenses of the System to whatever extent and if for any reason funds in the Operation and Maintenance Fund are insufficient for that purpose.

G. The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 1994 Bonds Sinking Fund created hereunder, and all amounts required for said Series 1994 Bonds Sinking Fund shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding such designation to the contrary, the Bond Commission shall deposit all remittances in the amounts and in the funds and accounts as provided herein.

H. The Bond Commission shall, on or prior to any Interest Payment Date, or principal payment date, remit to the Paying Agent the amount payable on the Series 1994 Bonds on such dates, to the extent that moneys are available in the Series 1994 Bonds Sinking Fund for such payment.

I. The moneys on deposit in the Revenue Fund and the Renewal and Replacement Fund in excess of the sum insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of municipal funds under the laws of the State.

J. The Issuer shall remit from the Revenue Fund to pay the fees and charges, if any, when due, of the Bond Commission, the Registrar, the Paying Agent, and the Depository Bank, on such dates as the Bond Commission, the Registrar, the Paying Agent, and the Depository Bank, as the case may be.

K. If on any monthly payment date the Gross Revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

L. Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the several Sinking Funds and Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be

deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective series of Bonds, and then to the next ensuing principal payments due thereon.

M. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

N. The Gross Revenues of the System shall only be used for purposes of the System.

O. All Connection Fees, if any, shall be deposited by the Issuer, as received, in the Revenue Fund and may be used for any lawful purpose of the System.

## ARTICLE V

### INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01.      Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Resolution in Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Renewal and Replacement Fund or any Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 3 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission, to semiannually transfer from any Reserve Account to the Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in each Reserve Account an amount at least equal to the Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from any Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in such Reserve Account shall, at any time, be less than the applicable Reserve Account Requirement, the applicable Bond Insurer shall be notified immediately of such deficiency, and such deficiency shall be

made up from the first available Net Revenues after required deposits to the Sinking Fund and otherwise in accordance with Section 4.03(4).

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in any Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia State Issuer of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended.

Section 5.02.      Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds of each series in such manner and to such extent as may be necessary, so that such Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on such Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03.      Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1994 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with

Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Holders of the Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Net Revenues of the System, the moneys in the Sinking Fund and all accounts therein, the unexpended proceeds of the Bonds or moneys in a construction fund, if any, all as herein provided. No Holder or Holders of any Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues; Respective Lien Positions. The payment of the debt service of all of the Series 1994 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on such Net Revenues in favor of the holders of the Series 1993 A Bonds, to the extent necessary to make the payments required under Section 4.03. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the Sinking Funds, all moneys and securities in the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Resolution, are hereby irrevocably pledged in the manner provided in this Resolution to the payment of the principal of and interest on the Series 1994 Bonds herein authorized and the Series 1993 A Bonds herein described as the same become due and for the other purposes provided in this Resolution.

Section 6.04. Rates. Prior to the issuance of the Series 1994 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Secretary of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross

Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than the sum of (i) 115% of the Maximum Annual Debt Service on all Bonds, the Series 1993 A Bonds and any additional Bonds ranking on a parity therewith in any Fiscal Year; and (ii) the amount, if any, required to be deposited in the Series 1993 A Bonds Reserve Account and Series 1994 Bonds Reserve Account in order to satisfy the respective Reserve Account Requirements within a period of not more than 12 months, assuming equal payments are made each month. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to apply to the Public Service Commission of West Virginia as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination by the Issuer that less than the above-required coverage exists or in the event that the annual budget shows that less than the above-required coverage will be available at any time during the next ensuing Fiscal Year, such increase to provide rates and charges sufficient to produce such required coverage.

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Revenues of said System in the manner provided in this Resolution.

Section 6.06. Sale of the System. Subject to applicable provisions of law and rules and regulations of the Public Service Commission of West Virginia, the System may be sold, mortgaged, leased or otherwise disposed of in whole, or substantially as a whole, and only if the net proceeds to be realized are sufficient to defease the pledge created by this Resolution as provided by Section 9.01. The net proceeds from such sale, less the amount immediately remitted to Bondholders, shall be deposited with the Public Service Commission for deposit in the Sink Fund Account. Any balance remaining after such deposit shall be held by the Commission unless necessary for the payment of the Revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Depreciation Fund or the Redemption Account. Such payments of such proceeds into the Depreciation Fund or the Redemption Account shall reduce the amounts required to be paid into said funds by other provisions of this Resolution.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Resolution, as provided by Section 9.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding or, in lieu of such consent, the written consent of the Bond Insurer, so long as the Bond Insurer is not in default under the Municipal Bond Insurance Policy. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Net Revenues with the Series 1994 Bonds; and all obligations hereafter issued by the Issuer payable from the Revenues of the System, except such additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such Revenues and in all other respects to the Series 1994 Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Series 1994

Bonds, as  
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ditional Parity Bonds. No additional parity Bonds, as in this  
he Revenues of the System shall be issued after the issuance  
ant to this Resolution, except under the conditions and in the

arity Bonds shall be issued except for the purpose of financing  
the costs of the of additions, betterments or improvements to the System,  
refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay  
claims which may exist against the revenues or facilities of the System or any combination  
of such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and  
until there has been procured and filed with the Secretary of the Issuer a written statement  
by Independent Accountants, reciting the conclusion that the Net Revenues actually derived  
from the System during the Fiscal Year preceding the date of the actual issuance of such  
additional parity Bonds, plus the increased annual Net Revenues expected to be received  
during the first year following the date of issuance of such parity Bonds shall not be less  
than 115% of the Maximum Annual Debt Service on the following:

- (1) The Series 1994 Bonds and Series 1993 A Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions  
contained in this Resolution then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "increased annual Net Revenues expected to be received" as that term is used  
in the computation provided in the above paragraph, shall refer only to the increased Net  
Revenues estimated to be derived from any increase in rates adopted by the Issuer and  
approved by the Public Service Commission of West Virginia, the time for appeal of which  
shall have expired (without successful appeal) prior to the date of delivery of such additional  
parity Bonds, and shall not exceed the amount to be stated in the aforementioned certificate  
of Independent Accountants, which shall be filed in the office of the Secretary of the Issuer  
prior to the issuance of such additional parity Bonds. The Net Revenues actually derived  
from the System during the preceding Fiscal Year hereinabove referred to may be adjusted  
by adding to such Net Revenues such additional Net Revenues which would have been  
received, in the opinion of the Consulting Engineers and the Independent Accountants as  
stated in a certificate jointly made and signed by the Consulting Engineers and the  
Independent Accountants, and filed with the Governing Body, on account of increased rates,  
rentals, fees and charges for the System adopted by the Issuer and approved by the Public

Service Commission of West Virginia the time for appeal of which shall have expired (without successful appeal) prior to issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 1994 Bonds, and all the covenants and other provisions of this Resolution (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1994 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any such Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Resolution required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Resolution.

No additional parity Bonds shall be valid unless authenticated pursuant to Section 3.03. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by Section 3.12 with respect to the Series 1994 Bonds (other than the Municipal Bond Insurance Policy), modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Net Revenues. Any subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made pursuant to Section 4.07 have been paid. The Issuer shall not issue any obligations whatsoever of the System, or any part thereof, which rank prior to or on a parity with the Series 1994 Bonds, and security for payment from such Net Revenues, with the Series 1994 Bonds, and under the conditions provided in this section.

No additional parity Bonds shall be issued at any time, however, unless all of the payments into the various active funds and accounts provided for in this Resolution on account of the Bonds Outstanding (excluding the Renewal and Replacement Fund), and any other payments provided for in this Resolution, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The Issuer may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual Debt Service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual Debt Service required in such year if the Bonds to be refunded were not so refunded.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than is customarily carried by municipalities of equivalent size with respect to works and properties similar to the System to protect the Issuer from claims for bodily injury and/or death and from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System, provided that, the Issuer, with the review of an insurance consultant and the concurrence of the Issuer, may elect to self-insure. If the Issuer determines in good faith that any required insurance is not commercially available at a reasonable cost with reasonable terms, it shall engage an insurance consultant to verify the determination and to make recommendations regarding the types, amounts and provisions of any such insurance that should be purchased or funded by the Issuer, taking into consideration the costs and practices of other municipal utility systems of similar size and type in the State to the extent that such information is available. The Issuer may, upon resolution adopted in good faith and upon the recommendations of the insurance consultant, adopt alternate or supplemental risk management programs which the Issuer determines to be reasonable, including the right to self-insure and participate in captive insurance companies.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than

100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Secretary of the County Commission of Berkeley County prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the Gross Revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 6.10. Report of Consulting Engineers. The Issuer shall, at least once every year, retain recognized independent Consulting Engineers in the field of waterworks engineering to supervise and review the operation, maintenance and repair of the System and to report to the Governing Body in writing their recommendations and comments pertaining to the System. Such annual report of the Consulting Engineers, or a summary thereof, shall be made available, upon request, to the Original Purchaser upon request and any Bondholder.

Section 6.11. Free Services and Services Rendered to the Issuer. The Issuer will not render or cause to be rendered any free services of any nature by its System, nor will any preferential services be established for users in the same class; and, in the event the Issuer, or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be Revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other Revenues derived from such operation of the System.

Section 6.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due

and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and any services and facilities of its sewer system, if so owned by the Issuer, to all delinquent users of services and facilities of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid, and shall take such further actions to enforce collections to the maximum extent permitted by law.

Section 6.13.      No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14.      Books and Records. The Issuer will keep a proper system of accounts showing receipts from the operation of the System so long as consistent with the laws of the State and will keep proper books of record and account of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Governing Body. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Original Purchaser and any Bond Insurer, within 120 days following the end of each Fiscal Year, and shall mail to any Bondholder requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution, and the status of all said funds and accounts.

(C) The amount of Series A Bonds, Bonds and other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Resolution and shall file said report with the Original Purchaser.

Section 6.15. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the Act and/or the by-laws, rules of procedure and resolutions of the Issuer, prepare and adopt by resolution a detailed, balanced budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance expenses of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of such Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and any bondholder who shall have filed their names and addresses with the Issuer for purposes of receiving such budget and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.16. Statutory Mortgage Lien. For the further protection of the Holders of the Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Bonds and shall be for the equal benefit of all Holders of the Bonds and the Series 1993 A Bonds Outstanding.

Section 6.17. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1994 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1994 Bonds during the term thereof is, under the terms of the Series 1994 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1994 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1994 Bonds during the term thereof is, under the terms of the Series 1994 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1994 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the project financed thereby, or if the Series 1994 Bonds are for the purpose of financing more than one project, a portion of the project financed thereby, and shall not exceed the proceeds used for the governmental use of the portion of the project financed thereby to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1994 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1994 Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will timely file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1994 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 1994 Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions or fail to take any actions the result of which would adversely affect such exclusion.

Section 6.18. Covenants Regarding the Municipal Bond Insurance Policy.

The Issuer intends to obtain a Municipal Bond Insurance Policy for the Series 1994 Bonds from AMBAC Indemnity. The following additional covenants of the Issuer are required by AMBAC Indemnity as a condition to insuring the Series 1994 Bonds, shall apply to the Series 1994 Bonds and any other Bonds which may be insured by AMBAC Indemnity and shall be controlling with respect to such Series 1994 Bonds in the event any other provisions of this Resolution may be in conflict therewith. The Issuer hereby covenants, with respect to the Series 1994 Bonds and any other Bonds insured by AMBAC Indemnity, as follows:

A. Consent of AMBAC Indemnity. Any provision of this Resolution expressly recognizing or granting rights in or to AMBAC Indemnity may not be amended in any manner which affects the rights of AMBAC Indemnity hereunder without the prior written consent of AMBAC Indemnity.

B. Consent of AMBAC Indemnity in Addition to Bondholder Consent. Unless otherwise provided in this Section, AMBAC Indemnity's consent shall be required in addition to Bondholder consent, when required, for the purposes of (i) execution and delivery of any supplemental or amendatory resolution or change to or modification of this Resolution; (ii) removal of the Registrar or Paying Agent and selection and appointment of any successor; and (iii) initiation or approval of any other action which requires Bondholder consent.

C. Consent of AMBAC Indemnity in the Event of Insolvency. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to AMBAC Indemnity. In the event of any reorganization or liquidation, AMBAC Indemnity shall have the right to vote on behalf of all bondholders who hold AMBAC Indemnity-insured bonds absent a default by AMBAC Indemnity under the applicable Municipal Bond Insurance Policy insuring such Bonds.

D. Consent of AMBAC Indemnity Upon Event of Default. Anything in this Resolution to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined herein, AMBAC Indemnity shall be entitled to control and direct the enforcement of all rights and remedies granted to the Bondholders under this Resolution, including, without limitation, the right to accelerate the principal of the Series 1994 Bonds as described in this Resolution and the right to annul any declaration of acceleration, and AMBAC Indemnity shall also be entitled to approve all waivers of Events of Default.

E. Notices to be Given to AMBAC Indemnity. While the Municipal Bond Insurance Policy is in effect, the Issuer shall furnish to AMBAC Indemnity:

- (i) As soon as practicable after the filing thereof, a copy of any financial statement of the Issuer and a copy of any audit and annual report of the Issuer;

(ii) A copy of any notice to be given to the registered owners of the Series 1994 Bonds, including, without limitation, notice of any redemption of or defeasance of Series 1994 Bonds, and any certificate rendered pursuant to this Resolution relating to the security for the Bonds; and

(iii) Such additional information AMBAC Indemnity may reasonably request.

The Issuer shall notify AMBAC Indemnity of any failure of the Issuer to provide relevant notices, certificates, etc.

The Issuer will permit AMBAC Indemnity to discuss the affairs, finances and accounts of the Issuer or any information AMBAC Indemnity may reasonably request regarding the security for the Series 1994 Bonds with appropriate officers of the Issuer. The Issuer will permit AMBAC Indemnity to have access to and to make copies of all books and records relating to the Series 1994 Bonds at any reasonable time.

AMBAC Indemnity shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within 30 days after receipt of written notice of the direction from AMBAC Indemnity shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any registered owner of the Series 1994 Bonds.

Notwithstanding any other provision of this Resolution, the Issuer shall immediately notify AMBAC Indemnity if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default.

F. Payment Procedure Pursuant to Municipal Bond Insurance Policy. As long as the Municipal Bond Insurance Policy shall be in full force and effect, the Issuer and any Paying Agent agree to comply with the following provisions:

(i) At least one (1) day prior to all Interest Payment Dates, the Paying Agent shall determine whether there will be sufficient funds in the funds and accounts established pursuant to this Resolution to pay the principal of and interest on the Series 1994 Bonds on such Interest Payment Date. If the Paying Agent determines that there will be insufficient funds in the funds and accounts to pay the principal of and/or interest on the Series 1994 Bonds on such Interest Payment Date, the Paying Agent shall so notify AMBAC Indemnity. Such notice shall specify the amount of the anticipated deficiency, the Series 1994 Bonds to which such deficiency is applicable and whether such Series 1994 Bonds will be deficient as to principal or interest, or both. If the Paying Agent has not so notified AMBAC Indemnity at least one (1) day prior to an Interest Payment Date, AMBAC Indemnity will make payments of

principal and/or interest due on the Series 1994 Bonds on or before the first (1st) day next following the date on which AMBAC Indemnity shall have received notice of nonpayment from the Paying Agent.

(ii) The Paying Agent shall, after giving notice to AMBAC Indemnity as provided in (i) above, make available to AMBAC Indemnity and, at AMBAC Indemnity's direction, to the United States Trust Company of New York, as insurance trustee for AMBAC Indemnity or any successor insurance trustee (the "Insurance Trustee"), the registration books of the Issuer maintained by the Paying Agent and all records relating to the funds and accounts maintained under this Resolution.

(iii) The Paying Agent shall provide AMBAC Indemnity and the Insurance Trustee with a list of registered owners of Series 1994 Bonds entitled to receive principal or interest payments from AMBAC Indemnity under the terms of the Municipal Bond Insurance Policy, and shall make arrangements with the Insurance Trustee (a) to mail checks or drafts to the registered owners of Series 1994 Bonds entitled to receive full or partial interest payments from the Insurer and (b) to pay principal upon Series 1994 Bonds surrendered to the Insurance Trustee by the registered owners of Series 1994 Bonds entitled to receive full or partial principal payments from AMBAC Indemnity.

(iv) The Paying Agent shall, at the time it provides notice to AMBAC Indemnity pursuant to (i) above, notify registered owners of Series 1994 Bonds entitled to receive the payment of principal or interest thereon from AMBAC Indemnity (a) as to the fact of such entitlement, (b) that AMBAC Indemnity will remit to them all or a part of the interest payments next coming due upon proof of Bondholder entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the registered owner's right to payment, (c) that should they be entitled to receive full payment of principal from AMBAC Indemnity, they must surrender their Series 1994 Bonds (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of such Series 1994 Bonds to be registered in the name of AMBAC Indemnity) for payment to the Insurance Trustee, and not the Paying Agent, and (d) that should they be entitled to receive partial payment of principal from AMBAC Indemnity, they must surrender their Series 1994 Bonds for payment thereon first to the Paying Agent, who shall note on such Series 1994 Bonds the portion of the principal paid by the Paying Agent, and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal.

(v) In the event that the Paying Agent has notice that any payment of principal of or interest on a Series 1993 Bond which has become Due for Payment (as defined in the Municipal Bond Insurance Policy) and which is made to a Bondholder by or on behalf of the Issuer has been deemed a preferential transfer and theretofore

recovered from its registered owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Paying Agent shall, at the time AMBAC Indemnity is notified pursuant to (i) above, notify all registered owners that in the event that any registered owner's payment is so recovered, such registered owner will be entitled to payment from AMBAC Indemnity to the extent of such recovery if sufficient funds are not otherwise available, and the Paying Agent shall furnish to AMBAC Indemnity its records evidencing the payments of principal of and interest on the Series 1994 Bonds which have been made by the Paying Agent, and subsequently recovered from registered owners and the dates on which such payments were made.

(vi) In addition to those rights granted AMBAC Indemnity under this Resolution, AMBAC Indemnity shall, to the extent it makes payment of principal of or interest on the Series 1994 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Municipal Bond Insurance Policy, and to evidence such subrogation (a) in the case of subrogation as to claims for past due interest, the Paying Agent shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Paying Agent upon receipt from AMBAC Indemnity of proof of the payment of interest thereon to the registered owners of the Series 1994 Bonds, and (b) in the case of subrogation as to claims for past due principal, the Paying Agent shall note AMBAC Indemnity's rights as subrogee on the registration books of the Issuer maintained by the Paying Agent upon surrender of the Series 1994 Bonds by the registered owners thereof together with proof of the payment of principal thereof.

G. AMBAC Indemnity as Third Party Beneficiary. To the extent this Resolution confers upon or gives or grants to AMBAC Indemnity any right, remedy or claim under or by reason of this Resolution, AMBAC Indemnity is hereby explicitly recognized as being a third-party beneficiary hereunder, and may enforce any such right, remedy or claim conferred, given or granted hereunder.

H. Parties Interested Herein. Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Issuer, the Registrar and Paying Agent, AMBAC Indemnity and the registered owners of the Series 1994 Bonds, any right, remedy or claim under or by reason of this Resolution or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar and Paying Agent, AMBAC Indemnity and the registered owners of the Series 1994 Bonds.

Section 6.19 Small Issuer Exemption from Bank Nondeductibility Restriction. The Issuer hereby designates the Series 1994 Bonds for purposes of paragraph (3) of Section 265(b) of the Code and covenants that the Series 1994 Bonds do not constitute private activity bonds as defined in Section 141 of the Code and determined

in accordance with Section 265(b)(3) of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for Federal income taxes (excluding, however, private activity bonds, as determined in accordance with the Code), including the Series 1994 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 1994, all as determined in accordance with the Code. For purposes of this paragraph and for the purposes of applying such Section 265(b)(3) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 265(b)(3) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as defined and set forth in the Code, availed of) to avoid the purposes of such Section 265(b)(3) of the Code and all entities benefiting thereby shall be treated as one issuer. The Series 1994 Bonds are not part of a composite issue.

## ARTICLE VII

### DEFAULTS AND REMEDIES

Section 7.01.      Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions relating to the Bonds on its part in this Resolution or any Supplemental Resolution or in the Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Bondholder or any Bond Insurer; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America.

Section 7.02.      Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder or any Bond Insurer may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Bondholders, including the right to require the Issuer to perform its duties under the Act and this Resolution;

(C) Bring suit upon the Bonds;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Resolution with respect to the Bonds or the rights of the Bondholders.

No remedy by the terms of this Resolution conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto. All rights and remedies of the Holders of the Bonds shall be for the equal benefit of the Holders of the Bonds.

Section 7.03.      Acceleration. If an Event of Default has occurred and is continuing, the Holders of not less than 25% in aggregate principal amount of any series of Bonds then Outstanding may, but only with the written consent of the Bond Insurer, so long as such Bond Insurer is not in default under the Municipal Bond Insurance Policy, by immediate notice in writing from such Holders or from the Registrar on behalf of such Holders to the Issuer and the Paying Agent, declare the principal of all Bonds then Outstanding to be immediately due and payable, and upon such declaration the said principal, together with interest accrued thereon, shall become due and payable immediately at the place of payment provided therein, anything in this Resolution or in the Bonds to the contrary notwithstanding.

Section 7.04.      Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts established and continued as provided herein and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his, her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Resolution and interest thereon and under any covenants of this Resolution for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Revenues of the System shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Bondholder shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, her or it shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Holders of the Bonds issued pursuant to this Resolution; provided, however, that such receiver shall hold and operate the System for the equal benefit of the Holders of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any Event of Default with respect to the provisions of this Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Notwithstanding any other provision of this Resolution, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Resolution, any trustee or Bondholder's committee shall consider the effect on the Bondholders as if no Municipal Bond Insurance Policy were then in effect.

Section 7.05.      Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Resolution by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

## ARTICLE VIII

### REGISTRAR; PAYING AGENT

Section 8.01.      Appointment of Registrar. The Registrar for the Series 1994 Bonds shall be appointed pursuant to the Supplemental Resolution. The Chairman of the Issuer is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02.      Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the Issuer, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Resolution and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03.      Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04.      Compensation and Expenses. The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05.      Certain Permitted Acts. The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Resolution, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds Outstanding.

Section 8.06.      Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Resolution by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a Bond. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately.

Section 8.07.      Removal. The Registrar may be removed at any time by the Issuer or by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.08.      Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a Bond. Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Resolution.

Section 8.09.      Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar shall also serve as the Paying Agent. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 8.02 shall also include the trusts and the duties of Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Resolution. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Bonds shall be and remain DTC-Eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Resolution. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Resolution, be held in trust for the purposes for which they were received.

Section 8.13. Bond Insurer Control of Registrar and Paying Agent.

(i) Notwithstanding the foregoing, so long as AMBAC Indemnity insures any of the Series 1994 Bonds, the Registrar and Paying Agent may be removed at any time, at the request of AMBAC Indemnity, for any breach of its obligations set forth herein;

(ii) AMBAC Indemnity shall receive prior written notice of resignation of any Registrar or Paying Agent;

(iii) Every successor Registrar or Paying Agent appointed pursuant to this Article VIII shall be a trust company or bank in good standing located in or incorporated under the laws of a state, duly authorized to exercise trust powers and subject to examination by Federal or state authority, having a reported capital and surplus of not less than \$7,000,000 and acceptable to AMBAC Indemnity. Any successor Paying Agent, if applicable, shall not be appointed unless AMBAC Indemnity approves such successor in writing;

(iv) Notwithstanding any other provision of this Resolution, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Resolution, the Registrar or Paying Agent shall consider the effect on the Bondholders as if there were no Municipal Bond Insurance Policy; and

(v) Notwithstanding any other provision of this Resolution, no removal, resignation or termination of the Registrar or Paying Agent shall take effect until a successor, acceptable to AMBAC Indemnity, shall be appointed.

## ARTICLE IX

### DEFEASANCE; DISCHARGE OF PLEDGE OF RESOLUTION

Section 9.01.      Defeasance; Discharge of Pledge of Resolution. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then this Resolution and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be otherwise necessary to assure the continued exclusion of the interest on the Series 1994 Bonds from gross income for Federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee as its agent either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time and available therefor, shall be sufficient to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or such escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, redemption premium, if any, and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or such escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Bond Commission or such escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations or those Qualified Investments permitted under Section 1.01 hereof to be used for such purpose.

Section 9.02. Series 1994 Bonds to Remain Outstanding if Paid by Bond Insurer. Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Series 1994 Bonds shall be paid by AMBAC Indemnity pursuant to the Municipal Bond Insurance Policy, the Series 1994 Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, and the pledge of Net Revenues and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of AMBAC Indemnity, subject to the terms hereof, and AMBAC Indemnity shall be subrogated to the rights of such registered owners.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendment or Modification of Resolution and Supplemental Resolution. This Resolution and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate of Excess Investment Earnings to the United States or otherwise as may be necessary to assure exemption from Federal income taxation of interest on the Series 1994 Bonds, provided that, in the event any of the Bonds are insured by AMBAC Indemnity, no such amendment or modification which adversely affects the security for such Bonds or the rights of AMBAC Indemnity may be effected without the written consent of AMBAC Indemnity. Otherwise, no materially adverse amendment or modification to this Resolution, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Bonds then Outstanding and affected thereby, which must be filed with the Governing Body of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Holder of such Bond, nor affect the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged or reduce the percentage of Bonds required for consent to any such modification or amendment. No change, variation or alteration of any kind of the provisions of this Resolution shall be made in any manner, except as in this Resolution provided.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Resolution may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Resolution if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Bondholder or his, her or its attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or

corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such Bonds and the numbers and other identification thereof, shall be confirmed by the Registrar.

Any request, consent or other instrument executed by the Holder of any Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Resolution shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Resolution shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the Issuer, be cancelled and delivered to the Registrar, or, if surrendered to the Registrar, be cancelled by it. No such Bonds shall be deemed Outstanding under this Resolution and no Bonds shall be issued in lieu thereof. All such Bonds shall be cancelled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this Resolution to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall

send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer. If any of said Bonds is a coupon Bond, the Registrar or said Paying Agent shall also publish such notice, not less than 30 days prior to the date such moneys will be returned to the Issuer, in an Authorized Newspaper.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, the Original Purchaser or the Bond Insurer shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

ISSUER

Berkeley County Public Service District  
Post Office Box 700  
Bunker Hill, West Virginia 25413  
Attention: General Manager

REGISTRAR AND PAYING AGENT

Bank One, West Virginia, N.A.  
Capitol and Virginia Streets  
Charleston, West Virginia 25324  
Attention: Corporate Trust Department

DEPOSITORY BANK

F & M Bank - Martinsburg  
131 South Queen Street  
Box 928  
Martinsburg, West Virginia 25401-0928  
Attention: Chief Executive Officer

ORIGINAL PURCHASER

Ferris, Baker Watts, Incorporated  
100 Light Street, Eighth Floor  
Baltimore, Maryland 21202  
Attention: Public Finance Department

## BOND INSURER

AMBAC Indemnity Corporation  
One State Street Plaza  
New York, New York 10004  
Attention: Surveillance Department

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Governing Body or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Resolution.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Resolution and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Resolution. All the covenants, stipulations, promises and agreements contained in this Resolution by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds, the Original Purchaser and the Bond Insurer.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution or the Supplemental Resolution.

Section 10.11. Table of Contents and Headings. The Table of Contents, headings and catchlines of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Resolution Constitutes Contract. The provisions of the Resolution shall constitute a contract between the Issuer and the Holders of the Bonds, and no change, variation or alteration of any kind of the provisions of the Resolution shall be made in any manner, except as in this Resolution provided.

Section 10.13. Conflicting Provisions Repealed. All orders, resolutions or parts thereof in conflict with the provisions of this Resolution are, to the extent of such

conflict, hereby repealed, provided that, in the event of any conflict between this Resolution and the Series 1993 A Bonds Resolution, the Series 1993 A Bonds Resolution shall control (unless less restrictive) so long as the Series 1993 A Bonds or any portion thereof are outstanding.

Section 10.14.      Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 10.15.      Effective Date. This Resolution shall take effect immediately upon adoption.

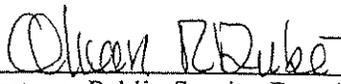
Adopted this 13th day of October, 1994.

Randy S. Kern  
Chairman, Public Service Board

CERTIFICATION

Certified a true copy of a Resolution adopted by the Public Service Board of Berkeley County Public Service District on this 13th day of October, 1994, at a special meeting after the giving of the required public notice and at which a quorum was present and acting throughout, and which resolution has not been modified, amended, revoked or otherwise altered (except as set forth in the Supplemental Resolution, described herein and adopted concurrently herewith) as of the date hereof.

Dated this 27th day of October, 1994.

  
Secretary, Public Service Board

10/24/94  
BCWJ.A6  
067740/94001

EXHIBIT A - BOND FORM  
[FORM OF FRONT OF BOND]  
STATEMENT OF INSURANCE

Municipal Bond Insurance Policy No. \_\_\_\_ (the "Policy") with respect to payments due for principal of and interest on this Bond has been issued by AMBAC Indemnity Corporation ("AMBAC Indemnity"). The Policy has been delivered to the United States Trust Company of New York, New York, New York, as the Insurance Trustee under said Policy and will be held by such Insurance Trustee or any successor insurance trustee. The Policy is on file and available for inspection at the principal office of the Insurance Trustee and a copy thereof may be secured from AMBAC Indemnity or the Insurance Trustee. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Bond acknowledges and consents to the subrogation rights of AMBAC Indemnity as more fully set forth in the Policy.

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
(WEST VIRGINIA)  
WATER REVENUE BOND,  
SERIES 1994

No. R-\_\_\_\_ \$ \_\_\_\_\_

INTEREST RATE    MATURITY DATE    BOND DATE    CUSIP NO.

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That BERKELEY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision duly organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as

hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above, and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, at the Interest Rate per annum specified above, semiannually, on March 1 and September 1 of each year, beginning March 1, 1995 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Resolution.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HEREIN.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of the series of which this Bond is one.

This Bond, under the provisions of the Act (hereinafter defined) is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Resolution.

This Bond is exempt from all taxation by the State of West Virginia, and the other taxing bodies of said State.

This Bond shall not be entitled to any benefit under the Resolution, as defined on the reverse hereof, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

The Registrar shall not be obliged to make any transfer or exchange of Bonds that have been called for redemption. The Issuer has caused CUSIP numbers to be printed on the Bonds, and has directed the Registrar to use such numbers in certain notices, if any,

as a convenience to Bondholders. No representation is made as to the accuracy of such numbers either as printed on the Bonds or as contained in any notice.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract, evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, BERKELEY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be imprinted hereon and attested by its Secretary, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Facsimile Signature)

Chairman

ATTEST:

(Facsimile Signature)

Secretary

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the Series 1994 Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner on the date set forth below. Imprinted on the reverse hereof is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Date of Authentication: \_\_\_\_\_

BANK ONE, WEST VIRGINIA, N.A.,  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

[FORM OF REVERSE OF BOND]

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by Bank One, West Virginia, N.A., Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each February 15 and August 15) at the address of such Registered Owner as it appears on the registration books of the Issuer maintained by Bank One, West Virginia, N.A., Charleston, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$500,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by such Registered Owner at least five days prior to such Interest Payment Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in Charleston, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$2,275,000 designated "Berkeley County Public Service District (West Virginia) Water Revenue Bonds, Series 1994" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated September 1, 1994, upon original issuance, the proceeds of which are to be used, together with other funds of the Issuer, to finance the costs of acquisition and construction of additions, betterments and improvements for the public waterworks system of the Issuer (the "Project"), to fund a debt service reserve account for the Bonds and to pay costs of issuance of the Bonds. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution and supplemental resolution duly adopted by the governing body of the Issuer on October 13, 1994 (hereinafter collectively referred to as the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution. Reference is hereby made to the Resolution, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Resolution are on file at the office of the Secretary of the Issuer in the City of Martinsburg, West Virginia.

THE BONDS ARE ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGES AND SOURCES OF AND SECURITY FOR PAYMENT WITH THE WATER REFUNDING REVENUE BONDS, SERIES 1993 A, OF THE ISSUER, DATED MARCH 1, 1993, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$3,350,000 (THE "SERIES 1993 A BONDS").

This Bond is additionally secured, but only to the extent described in the Statement of Insurance printed hereon, by a policy of municipal bond insurance issued by AMBAC Indemnity Corporation.

Optional Redemption. The Bonds maturing on or after September 1, 2005, are subject to redemption prior to maturity at the option of the Issuer on and after September 1, 2004, in whole at any time or in part on any Interest Payment Date at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Redemption Periods</u> (Both Dates Inclusive)	<u>Redemption Price</u>
September 1, 2004 through August 31, 2005	102%
September 1, 2005 through August 31, 2006	101
September 1, 2006 and thereafter	100

Mandatory Sinking Fund Redemption. The Bonds maturing September 1, 2014, and September 1, 2019 (the "Term Bonds"), are subject to mandatory sinking fund redemption prior to maturity in part by random selection as may be determined by the Registrar, on September 1 of the years and in accordance with the following mandatory redemption schedule, at a redemption price equal to the principal amount thereof plus interest accrued to the date fixed for redemption, without premium:

Series 1994 Bonds Maturing September 1, 2014

<u>Year (September 1)</u>	<u>Amount</u>
2011	\$105,000
2012	110,000
2013	115,000
2014	125,000*

Series 1994 Bonds Maturing September 1, 2019

<u>Year (September 1)</u>	<u>Amount</u>
2015	\$130,000
2016	140,000
2017	145,000
2018	155,000
2019	165,000*

\*Final Maturity

In the event of any redemption of less than all outstanding Bonds, maturities shall be selected by the Issuer and Bonds within a maturity shall be selected by lot or in such other manner deemed appropriate by the Registrar. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and maturity dates. Notice of the call for any redemption, unless waived by the Registered Owner, shall be given by the Registrar, by mailing a redemption notice, by registered or certified mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of any Bond or portions of Bonds to be redeemed in whole or in part at the address shown on the registration books of the Issuer maintained by the Registrar, for registration and transfer of the Bonds under the Resolution, and as otherwise prescribed in the Resolution; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

The Bonds and the interest thereon are payable only from and are secured by the Net Revenues to be derived with respect to the System and all moneys in the Series 1994 Bonds Sinking Fund established under the Resolution (including the Series 1994 Bonds Reserve Account therein) and the Revenue Fund, on a parity in all respects with the Series 1993 A Bonds herein described, and the unexpended proceeds of the Bonds, and the Issuer hereby and in the Resolution pledges such revenues and moneys to such payment. Said Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued by the Issuer pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make certain other payments required by the Resolution. This Bond does not constitute a corporate indebtedness of the Issuer within any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, and the moneys in the Series 1994 Bonds Sinking Fund and the Revenue Fund, and the unexpended Bond proceeds, if any. Under the Resolution, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates and charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to produce

revenues net of such operating expenses equal to at least 115% of the maximum annual amount required to pay the interest and principal as the same become due and accomplish retirement of the Series 1993 A Bonds, the Series 1994 Bonds and any additional bonds issued on a parity therewith, and to make any required payments into the respective Reserve Accounts. Such required payments on behalf of the principal of and interest on the Bonds shall constitute a first charge upon all the Net Revenues of the System, on a parity with the Series 1993 A Bonds. The Issuer has entered into certain further covenants with the registered owners of the Bonds, for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds, except for accrued interest thereon, shall be applied solely to pay costs of acquisition and construction of the Project, create a reserve for the Bonds and pay costs and expenses in connection therewith, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the registered owners of said Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of additional Bonds which shall be equally and ratably secured under the Resolution with the Bonds.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Indenture. Neither the Issuer nor the Registrar shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

This Bond is hereby and in the Resolution designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

ASSIGNMENT

Social Security or Other Identifying Number of Assignee \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers  
unto \_\_\_\_\_

\_\_\_\_\_ the  
within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to  
transfer the said Bond on the books kept for registration thereof with full power of  
substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

(West Virginia)

\$2,275,000 Water Revenue Bonds, Series 1994

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 1994, OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT; AUTHORIZING AND APPROVING A BOND PURCHASE CONTRACT, A REGISTRAR AND PAYING AGENT AGREEMENT, AN OFFICIAL STATEMENT AND OTHER INSTRUMENTS RELATING TO THE BONDS; APPOINTING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, Berkeley County Public Service District (the "Issuer"), in the County of Berkeley, State of West Virginia, is a public service district and a public corporation and political subdivision of said State, the governing body of which is its public service board (the "Board");

WHEREAS, the Board duly adopted on October 13, 1994, a resolution (the "Resolution") entitled:

A RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE EXISTING PUBLIC WATERWORKS SYSTEM OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT, OF ITS WATER REVENUE BONDS, SERIES 1994, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$2,275,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE DISTRICT, SHALL BE EXPENDED FOR SUCH PURPOSE, TO FUND A RESERVE FOR THE BONDS AND TO PAY COSTS AND EXPENSES IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; PROVIDING FOR THE

RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, such Resolution provided for the issuance of the Issuer's Water Revenue Bonds, Series 1994 (the "Series 1994 Bonds"), in an aggregate principal amount not to exceed \$2,275,000, the proceeds of which are to be used, together with other funds of the Issuer for the purposes of financing, acquisition and construction of certain additions, betterments and improvements for the public waterworks system of the Issuer, funding a debt service reserve account for the Series 1994 Bonds and paying costs of issuance thereof, all as set forth and described therein, in accordance with Chapter 16, Article 13A, of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Resolution provided that the exact principal amount of the Series 1994 Bonds to be sold and the maturities, interest rates, redemption provisions and the price of the Series 1994 Bonds should be established, that a Paying Agent, Registrar and Depository Bank be designated and that other matters pertaining to the Series 1994 Bonds be provided for by a supplemental resolution of this Board upon receipt of a Bond Purchase Contract acceptable to this Board;

WHEREAS, the Series 1994 Bonds are proposed to be purchased by Ferris, Baker Watts, Incorporated (the "Original Purchaser"), pursuant to a Bond Purchase Contract dated the date of adoption hereof (the "Purchase Contract");

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Resolution; and

WHEREAS, the Board deems it essential and desirable that this Supplemental Resolution be adopted and that the Purchase Contract and the Registrar and Paying Agent Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Series 1994 Bonds, hereinafter described, be approved, that the prices of the Series 1994 Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amount of the Series 1994 Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 1994 Bonds be herein provided for, all in accordance with said Resolution;

NOW, THEREFORE, THE PUBLIC SERVICE BOARD OF BERKELEY COUNTY PUBLIC SERVICE DISTRICT HEREBY RESOLVES:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Series 1994 Bonds in the aggregate principal amount of \$2,275,000. The Series 1994 Bonds shall be dated September 1, 1994, upon original issuance, shall bear interest payable semiannually on March 1 and September 1 of each year, commencing March 1, 1995, and shall mature on September 1 in years as follows:

<u>Maturity</u> <u>(Sept. 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity</u> <u>(Sept. 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>
1995	\$45,000	3.90%	2004	\$70,000	5.30%
1996	50,000	4.25	2005	75,000	5.40
1997	50,000	4.45	2006	80,000	5.50
1998	55,000	4.60	2007	80,000	5.70
1999	55,000	4.75	2008	85,000	5.80
2000	60,000	4.90	2009	90,000	5.90
2001	60,000	5.00	2010	100,000	6.00
2002	65,000	5.10	2014	455,000	6.20
2003	65,000	5.20	2019	735,000	6.25

Section 2. The Series 1994 Bonds maturing on or after September 1, 2004, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after September 1, 2003, in whole at any time or in part on any interest payment date, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the respective redemption prices (expressed as percentages of the principal amounts to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

<u>Redemption Period</u> <u>(Both Dates Inclusive)</u>	<u>Redemption</u> <u>Prices</u>
September 1, 2003 through August 31, 2004	102%
September 1, 2004 through August 31, 2005	101
September 1, 2005 and thereafter	100

The Series 1994 Bonds maturing September 1, 2014, and September 1, 2019 (the "Term Bonds"), shall be subject to mandatory sinking fund redemption prior to maturity in part by random selection as may be determined by the Registrar, on September 1 of the years and in accordance with the following mandatory redemption

schedule, at a redemption price equal to the principal amount thereof plus interest accrued to the date fixed for redemption, without premium:

Series 1994 Bonds Maturing September 1, 2014

<u>Year (September 1)</u>	<u>Amount</u>
2011	\$105,000
2012	110,000
2013	115,000
2014	125,000*

Series 1994 Bonds Maturing September 1, 2019

<u>Year (September 1)</u>	<u>Amount</u>
2015	\$130,000
2016	140,000
2017	145,000
2018	155,000
2019	165,000*

\*Final Maturity

The amounts accumulated for any sinking fund installment may be applied by the Paying Agent prior to the 45th day preceding the due date of such sinking fund installment to the purchase of Series 1994 Bonds subject to redemption at a price (including any brokerage and other charges) not exceeding the principal amount thereof, plus accrued interest to the date of purchase. Upon any purchase of Series 1994 Bonds by application of moneys set aside to pay sinking fund installments, an amount equal to the principal amount thereof shall be credited toward the applicable sinking fund installment, and any principal amount of Series 1994 Bonds may be applied toward reduction of any applicable future sinking fund installments as the Issuer may designate.

All other provisions relating to the Series 1994 Bonds shall be as provided in the Resolution, and the Series 1994 Bonds shall be in substantially the form provided in the Resolution.

Section 3. The Purchase Contract between the Original Purchaser and the Issuer, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the Chairman and the sealing and attestation by the Secretary of the Public Service Board on this day of the Purchase Contract on behalf of the Issuer are hereby authorized, approved and directed. The Chairman and Secretary shall execute and

deliver the Purchase Contract with such changes, insertions and omissions as may be approved by the Chairman. The execution of the Purchase Contract by the Chairman shall be conclusive evidence of any approval required by this Section. The price of the Series 1994 Bonds, pursuant to the Purchase Contract, shall be \$2,207,274.95 (\$2,275,000 par amount, less \$22,950.05 original issue discount, less \$44,775.00 Underwriter's Discount), plus interest accrued from the date of the Series 1994 Bonds to the date of delivery of the Series 1994 Bonds, expected to be on or about October 27, 1994.

Section 4. The Official Statement dated October 13, 1994, to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Chairman) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Chairman shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Chairman. The execution of the Official Statement by the Chairman shall be conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary Official Statement dated October 7, 1994 (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Chairman is hereby ratified and approved.

Section 5. The Registrar and Paying Agent Agreement (the "Registrar's Agreement") to be dated the Closing Date, by and between the Issuer and the Registrar/Paying Agent designated herein, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Chairman shall execute and deliver the Registrar's Agreement with such changes, insertions and omissions as may be approved by the Chairman. The execution of the Registrar's Agreement by the Chairman shall be conclusive evidence of any approval required by this Section.

Section 6. The Issuer does hereby appoint and designate Bank One, West Virginia, N.A., Charleston, West Virginia, for the purpose of serving in the capacities of Registrar and Paying Agent, and F & M Bank - Martinsburg, Martinsburg, West Virginia, for the purpose of serving as Depository Bank.

Section 7. The firm of Steptoe & Johnson, Clarksburg, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 1994 Bonds.

Section 8. The Issuer and all subordinate entities do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year 1994 and hereby designates the Bonds as "qualified tax-exempt obligations," as defined in Section 265(b)(3)(B) of the Code.

Section 9. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1994 Bonds, hereby and by the Resolution approved and provided for.

Section 10. Under the provisions of the Act, and as provided in the Resolution and the Series 1994 Bonds, the Series 1994 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, but shall be payable solely from the Net Revenues derived from the operation of the waterworks system of the Issuer and the moneys in the Sinking Fund (including, the Reserve Account therein) established by the Resolution and the credit of the Issuer is not pledged for, and no tax shall ever be levied for, payment of the Bonds and the interest thereon.

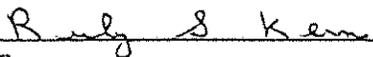
Section 11. The Chairman, Secretary and other appropriate officers and employees of the Issuer are hereby authorized and directed to take all actions necessary to cause the Series 1994 Bonds to be insured by AMBAC Indemnity Corporation or such other municipal bond insurance company as is acceptable to the Original Purchaser.

Section 12. All orders, ordinances or resolutions or parts thereof in conflict with the provisions of this Supplemental Resolution (excluding the Resolution) are, to the extent of such conflict, hereby repealed.

Section 13. This Supplemental Resolution shall be effective immediately.

Adopted this 13th day of October, 1994.

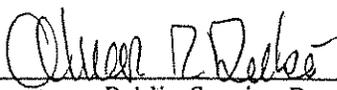
BERKELEY COUNTY PUBLIC SERVICE  
DISTRICT

  
\_\_\_\_\_  
Chairman

CERTIFICATION

Certified a true copy of a Supplemental Resolution adopted by the Public Service Board of Berkeley County Public Service District on this 13th day of October, 1994, at a special meeting after the giving of the required public notice and at which a quorum was present and acting throughout, and which Supplemental Resolution has not been modified, amended, revoked or otherwise altered as of the date hereof.

Dated this 27th day of October, 1994.

  
Secretary, Public Service Board

10/20/94  
BCWJ.B3  
067740/94001

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

BANK ONE CENTER

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

October 27, 1994

Berkeley County Public Service District  
(West Virginia)

\$2,275,000 Water Revenue Bonds, Series 1994

SEVENTH FLOOR, BANK ONE CENTER  
P. O. BOX 1588  
CHARLESTON, W. VA. 25326-1588  
(304) 353-8000  
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER  
P. O. BOX 1818  
MORGANTOWN, W. VA. 26507-1818  
(304) 598-8000  
FACSIMILE (304) 598-8118

125 EAST BURKE STREET  
P. O. BOX 2829  
MARTINSBURG, W. VA. 25401-5429  
(304) 263-6991  
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET  
P. O. BOX 100  
CHARLES TOWN, W. VA. 25414-0100  
(304) 725-1414  
FACSIMILE (304) 725-1911

THE BRYAN CENTRE  
P. O. BOX 570  
82 WEST WASHINGTON STREET, FOURTH FLOOR  
HAGERSTOWN, MARYLAND 21740-0570  
(301) 739-8800  
FACSIMILE (301) 739-8742

FOURTH FLOOR - RILEY BUILDING  
14TH AND CHARLINE STREETS  
P. O. BOX 150  
WHEELING, W. VA. 26008-0020  
(304) 233-0000  
FACSIMILE (304) 233-0014

WRITER'S DIRECT DIAL NUMBER

Berkeley County Public Service District  
Bunker Hill, West Virginia

Ferris, Baker Watts, Incorporated  
Baltimore, Maryland

AMBAC Indemnity Corporation  
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by Berkeley County Public Service District (the "Issuer") of its \$2,275,000 aggregate principal amount of Water Revenue Bonds, Series 1994 (the "Bonds").

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and a Bond Resolution duly adopted by the Issuer on October 13, 1994, as supplemented by a Supplemental Resolution also duly adopted by the Issuer on October 13, 1994 (said Bond Resolution, as so supplemented, herein called the "Resolution") and are subject to all the terms and conditions of the Resolution.

The Bonds are issued in fully registered form, are dated September 1, 1994, upon original issuance, mature on September 1 in years and amounts and bear interest payable each March 1 and September 1, commencing March 1, 1995, as follows:

<u>Maturity</u> <u>(Sept. 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity</u> <u>(Sept. 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>
1995	\$45,000	3.90%	2004	\$70,000	5.30%
1996	50,000	4.25	2005	75,000	5.40
1997	50,000	4.45	2006	80,000	5.50
1998	55,000	4.60	2007	80,000	5.70
1999	55,000	4.75	2008	85,000	5.80
2000	60,000	4.90	2009	90,000	5.90
2001	60,000	5.00	2010	100,000	6.00
2002	65,000	5.10	2014	455,000	6.20
2003	65,000	5.20	2019	735,000	6.25

The Bonds maturing on and after September 1, 2005, are redeemable prior to their stated dates of maturity at the option of the Issuer, on or after September 1, 2004, in whole at any time or in part on any interest payment date, in such order of maturity as shall be designated to the Registrar by the Issuer and by lot within a maturity, at the redemption prices (expressed as percentages of principal amounts to be redeemed), plus interest accrued to the date fixed for redemption, as provided in the Resolution. The Bonds maturing on September 1, 2014 and September 1, 2019 are also subject to mandatory sinking fund redemption as provided in the Resolution.

The Resolution provides that the Bonds are issued for the purposes of providing funds, together with other moneys of the Issuer, (i) to pay costs of acquisition and construction of additions, betterments and improvements for the existing public waterworks system of the Issuer (the "Project"), (ii) to fund a reserve account for the Bonds, and (iii) to pay costs of issuance of the Bonds, all as set forth and described in the Resolution.

The Bonds have been sold to Ferris, Baker Watts, Incorporated (the "Purchaser") pursuant to a Bond Purchase Contract dated October 13, 1994, and accepted by the Issuer (the "Purchase Contract").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer and others contained in the Resolution and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and agreements of the Issuer and others pertaining to tax matters set forth in the Resolution and certain certificates delivered in connection with the issuance of the Bonds, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing public corporation and political subdivision of the State of West Virginia under and pursuant to the Constitution and laws of such State and has full legal right, power and authority to adopt the Resolution, enter into the Purchase Contract, perform its obligations under the terms and provisions thereof, issue and sell the Bonds, acquire and construct the Project, and own and operate its waterworks system (the "System").

2. The Issuer, through its governing body, has legally and effectively adopted the Resolution, has authorized, executed and delivered the Purchase Contract and has issued and delivered

the Bonds to the Purchaser pursuant to the Purchase Contract. The Resolution is in full force and effect as of the date hereof and constitutes a valid and binding obligation of the Issuer, enforceable in accordance with its terms.

3. Assuming due authorization, execution and delivery by the Purchaser, the Purchase Contract constitutes the valid, legal, binding and enforceable instrument of the Issuer in accordance with its terms; and the Bonds, subject to the terms thereof, constitute valid and legally enforceable limited obligations of the Issuer, payable and enforceable in accordance with their terms and the terms of the Resolution and are entitled to the benefits of the Resolution and the Act.

4. The Bonds constitute valid and legally binding special obligations of the Issuer, payable solely from and secured by a first lien on and pledge of the net revenues derived from the operation of the System and moneys in the Sinking Fund created under the Resolution (including the Reserve Account therein) on a parity with the Issuer's outstanding Water Refunding Revenue Bonds, Series 1993 A, dated March 1, 1993 (the "Prior Bonds"). The Bonds are enforceable in accordance with their terms and the terms of the Resolution.

5. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (including original issue discount properly allocable to the owners of the Bonds) (a) is excludable from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income (adjusted current earnings for taxable years beginning after December 31, 1989). Ownership of tax-exempt obligations, including the Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences except as set forth in paragraph 7 below. Prospective purchasers of the Bonds should consult their own tax advisors as to such consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code") that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Resolution and the certificate relating to arbitrage. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds.

6. Under the Act, the Bonds are exempt from taxation by the State of West Virginia, and the other taxing bodies of the State, and the interest on the Bonds is exempt from personal and corporate income taxes imposed directly thereon by the State of West Virginia.

7. The Issuer has designated the Bonds as "qualified tax-exempt obligations" for purposes of the Code and has covenanted that it does not reasonably expect to issue, together with subordinate entities, more than \$10,000,000 of tax-exempt obligations (other than private activity bonds)

Berkeley County Public Service District, et al.

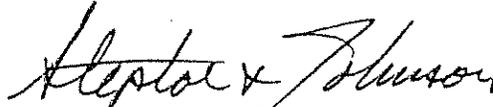
Page 4

during the calendar year 1994. Therefore, the Bonds are "qualified tax-exempt obligations," and the provision of the Code which disallows all deductibility of interest expense incurred by financial institutions on debt incurred or continued to purchase or carry most tax-exempt obligations does not apply to the Bonds; accordingly, 80% of the interest expense of a financial institution incurred for the purpose of purchasing or carrying the Bonds is deductible for federal income tax purposes.

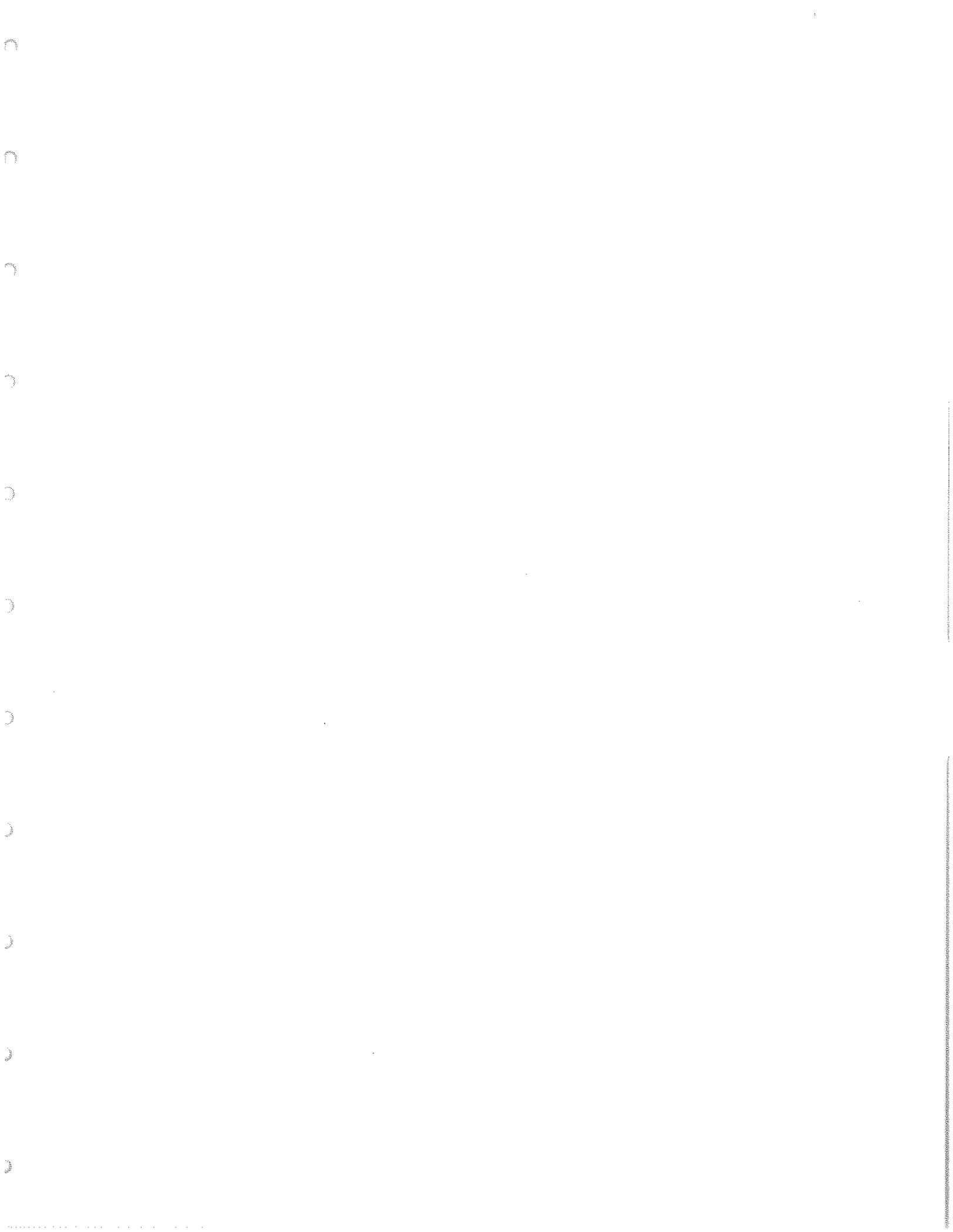
8. The Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Bonds, to register any securities under said Securities Acts.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Resolution and the Purchase Contract are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally, and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

  
STEPTOE & JOHNSON

10/24/94  
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## NEW ISSUE - FULL BOOK ENTRY

*In the opinion of Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2003 Bonds (i) is excludable from gross income of the owners thereof for federal income tax purposes, assuming compliance with certain provisions described herein pertaining to the Internal Revenue Code of 1986, as amended (the "Code"), (ii) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, and (iii) under the laws of the State of West Virginia, the Series 2003 Bonds are exempt from taxation by the State of West Virginia, and the other taxing bodies of the State and the interest on the Series 2003 Bonds is exempt from personal and corporate income taxes imposed directly thereon by the State of West Virginia. In addition, Bond Counsel is of the opinion that the Series 2003 A Bonds are "qualified tax-exempt obligations" within the meaning of Section 265 (b) (3) of the Code (see "Tax Matters" herein).*

**\$1,330,000**

**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BONDS, SERIES 2003 A (BANK QUALIFIED)**

**AND**

**\$2,030,000**

**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)  
WATER REFUNDING REVENUE BONDS, SERIES 2003 B (NON-BANK QUALIFIED)**

**Dated:** April 1, 2003

**Due:** As shown on inside front cover

The Series 2003 A Bonds and the Series 2003 B Bonds (collectively, the "Series 2003 Bonds") shall be issued only as fully registered Bonds, and when initially issued, will be registered to Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Individual purchases will be made in book-entry form only and beneficial owners of the Series 2003 Bonds will not receive physical delivery of bond certificates. So long as DTC or its nominee is the registered owner of the Series 2003 Bonds, payments of the principal of and interest on the Series 2003 Bonds will be made directly to DTC. Disbursements of such payments to DTC participants is the responsibility of DTC, and disbursement of such payments to the beneficial owners is the responsibility of DTC participants (see "THE SERIES 2003 BONDS—Book-Entry Bonds" herein). The Series 2003 Bonds are subject to redemption prior to maturity as more fully stated herein.

The Series 2003 Bonds are being issued by Berkeley County Public Service District (the "District") to provide funds, together with other moneys available therefor, (i) to currently refund the District's Water Refunding Revenue Bonds, Series 1993 A; (ii) to advance refund the District's Water Revenue Bonds, Series 1994; (iii) to fund the Series 2003 A and Series 2003 B Bonds Reserve Account; and (iv) to pay all costs of issuance and related costs.

The Series 2003 Bonds are payable from and secured by the net revenues derived from the existing waterworks system of the District and any additions, betterments and improvements thereto and from funds on deposit in the respective Sinking Funds and the Reserve Account established therefor. The Series 2003 Bonds do not constitute an indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations, and the District shall not be obligated to pay the Series 2003 Bonds, any premium or the interest thereon, except from such net revenues and such funds on deposit for the Series 2003 Bonds. Neither the credit nor the taxing power, if any, of the District shall be deemed to be pledged to, nor shall a tax ever be levied for, the payment of the principal of or the premium, if any, or interest on the Series 2003 Bonds. The District has no taxing powers.

Payment of the principal of and interest on the Series 2003 Bonds when due will be insured by a financial guaranty insurance policy to be issued by Ambac Assurance Corporation simultaneously with the delivery of the Series 2003 Bonds.

# **Ambac**

Fifth Third Bank, Cincinnati, Ohio, is the Registrar and the West Virginia Municipal Bond Commission, Charleston, West Virginia, is the Paying Agent. Interest on the Series 2003 Bonds is payable semiannually on each March 1 and September 1, commencing September 1, 2003. Principal of the Series 2003 Bonds is payable annually as set forth on the inside cover page.

The Series 2003 Bonds are offered when, as and if issued and received by the Underwriter, subject to prior sale, to withdrawal or modification of the offering without notice and to the unqualified approval of legality by Steptoe & Johnson PLLC, Charleston, West Virginia, Bond Counsel. Certain legal matters will be passed upon for the District by Hoy Shingleton, Esquire, Martinsburg, West Virginia, counsel to the District. Certain legal matters will be passed upon for the Underwriter by Jackson Kelly PLLC, Charleston, West Virginia, as counsel to the Underwriter.

It is expected that the Series 2003 Bonds will be available for delivery at DTC, New York, New York, on or about April 30, 2003.

**ROSS, SINCLAIRE & ASSOCIATES**

**Dated:** April 17, 2003

**\$1,330,000**  
**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)**  
**WATER REFUNDING REVENUE BONDS,**  
**SERIES 2003 A (BANK QUALIFIED)**

**AND**

**\$2,030,000**  
**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)**  
**WATER REFUNDING REVENUE BONDS,**  
**SERIES 2003 B (NON-BANK QUALIFIED)**

**MATURITY SCHEDULE**

**\$1,330,000 SERIES 2003 A BONDS**

<u>Maturity Date</u>	<u>Maturity Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
3/1/04	\$300,000	2.0000%	1.2000%
3/1/05	265,000	2.0000	1.5500
3/1/06	275,000	2.0000	1.8500
3/1/07	280,000	2.2000	2.3000
3/1/08	110,000	2.5000	2.6500
3/1/09	50,000	2.9000	3.0000
3/1/10	50,000	3.2000	3.3000

**\$2,030,000 SERIES 2003 B BONDS**

<u>Maturity Date</u>	<u>Maturity Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
9/1/03	\$50,000	2.0000%	1.2000%
9/1/04	75,000	2.0000	1.2500
9/1/05	75,000	2.0000	1.6000
9/1/06	75,000	2.0000	1.9000
9/1/07	50,000	2.3500	2.3500
9/1/08	260,000	3.0000	2.7000
9/1/09	60,000	3.0000	3.0000
9/1/10	120,000	3.3000	3.3000
9/1/11	125,000	3.5500	3.5500
9/1/12	125,000	3.7000	3.7000
9/1/13	130,000	3.8000	3.8000
9/1/14	135,000	3.9500	3.9495
9/1/15	140,000	4.0000	4.1000
9/1/16	145,000	4.1000	4.2000
9/1/17	150,000	4.2000	4.3000
9/1/18	155,000	4.3000	4.4000
9/1/19	160,000	4.4000	4.5000

**(Accrued interest to be added)**

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2003 Bonds in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. No dealer, broker, salesman or other person has been authorized by the District or the Underwriter to give any information or to make any representations, other than as contained in this Official Statement. If given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. The information set forth herein has been obtained from the District and other sources which are believed to be reliable but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter. The information and any expression of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District, since the date hereof.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2003 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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- Appendix D - Summary of Certain Provisions of the Resolution
- Appendix E - Specimen Financial Guaranty Insurance Policy

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**BERKELEY COUNTY PUBLIC SERVICE DISTRICT**

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**PUBLIC SERVICE BOARD**

William L. Stubblefield, Chairman  
Calvin Bruce Dorsey, Vice Chairman  
Gregory Rhoel, Secretary  
Howard Collins, Treasurer  
D. Wayne Dunham, Parliamentarian

**ADMINISTRATION**

Paul S. Fisher, Executive Director

**BOND COUNSEL**

Stephoe & Johnson PLLC  
Charleston, West Virginia

**COUNSEL TO THE DISTRICT**

Hoy Shingleton, Esquire  
Martinsburg, West Virginia

**UNDERWRITER**

Ross, Sinclair & Associates  
Frankfort, Kentucky

**UNDERWRITER'S COUNSEL**

Jackson Kelly PLLC  
Charleston, West Virginia

OFFICIAL STATEMENT

relating to

**\$1,330,000**  
**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)**  
**WATER REFUNDING REVENUE BONDS,**  
**SERIES 2003A (BANK QUALIFIED)**

AND

**\$2,030,000**  
**BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)**  
**WATER REFUNDING REVENUE BONDS,**  
**SERIES 2003 B (NON-BANK QUALIFIED)**

INTRODUCTION

This Official Statement, including the cover page and appendices, is provided for the purpose of setting forth certain information concerning Berkeley County Public Service District (the "District"), the District's waterworks system hereinafter described and defined and the District's Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) (the "Series 2003 A Bonds") and Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified) (the "Series 2003 B Bonds") (collectively, the "Series 2003 Bonds"). The Series 2003 Bonds are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), specifically Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and a bond resolution and supplemental resolution adopted by the Board of the District on April 14, 2003 (collectively, the "Resolution").

The proceeds of the Series 2003 Bonds, together with other funds available therefor, will be used (i) to currently refund the District's Water Refunding Revenue Bonds, Series 1993 A, dated March 1, 1993, originally issued in the aggregate principal amount of \$3,350,000, and presently outstanding in the principal amount of \$1,330,000 (the "Series 1993 A Bonds"); (ii) to advance refund the District's Water Revenue Bonds, Series 1994, dated September 1, 1994, originally issued in the aggregate principal amount of \$2,275,000, and presently outstanding in the principal amount of \$1,835,000 (the "Series 1994 Bonds"); (iii) to fund the Series 2003 A and Series 2003 B Bonds Reserve Account; and (iv) to pay all costs of issuance of the Series 2003 Bonds and related costs.

In addition to the Series 1993 A Bonds and the Series 1994 Bonds, the District currently has outstanding (i) Water Revenue Bonds, Series 1993 B, dated March 8, 1993, issued in the original aggregate principal amount of \$528,871 (the "Series 1993 B Bonds"); (ii) Water Revenue Bonds, Series 1993 C, dated March 8, 1993, issued in the original aggregate principal amount of \$17,629 (the "Series 1993 C Bonds"); (iii) Water Revenue Bonds, Series 1993 D, dated July 29, 1993, issued in the original aggregate principal amount

of \$10,257,957 (the "Series 1993 D Bonds"); (iv) Water Revenue Bonds, Series 1996, dated August 6, 1996, issued in the original aggregate principal amount of \$677,158 (the "Series 1996 Bonds"); (v) Water Revenue Bonds, Series 1997, dated June 25, 1997, issued in the original aggregate principal amount of \$3,339,090 (the "Series 1997 Bonds"); and (vi) Water Revenue Bonds, Series 2001 A (West Virginia Water Development Authority), dated October 25, 2001, issued in the original aggregate principal amount of \$2,010,000 (the "Series 2001 A Bonds") (collectively, hereinafter called the "Prior Bonds"). The resolutions pursuant to which the Prior Bonds were issued are hereinafter collectively called the "Prior Resolutions."

The Series 2003 Bonds shall be issued on a parity with the Prior Bonds (except the Series 1993 C Bonds) with respect to liens, pledge and source of and security for payment and in all other respects. The Series 2003 Bonds shall be issued senior and prior to the Series 1993 C Bonds with respect to liens, pledge and source of and security for payment and in all other respects. See "SECURITY FOR THE SERIES 2003 BONDS."

The Series 2003 Bonds are payable from and secured by the Net Revenues, as defined in the Resolution, derived from the existing waterworks system of the District and any additions, betterments and improvements thereto (the "System"), and from funds on deposit in the Series 2003 A Bonds Sinking Fund, the Series 2003 B Bonds Sinking Fund and the Series 2003 A and Series 2003 B Bonds Reserve Account. The Series 2003 Bonds do not constitute an indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations, and the District shall not be obligated to pay the Series 2003 Bonds or any premium or the interest thereon, except from such Net Revenues and such funds on deposit for the Series 2003 Bonds. Pursuant to the Resolution, the District has covenanted and agreed to establish and collect just and equitable rates and charges for the use of the System and the services rendered thereby as will always produce Net Revenues equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2003 Bonds, the Prior Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2003 Bonds, including the Prior Bonds. See "SECURITY FOR THE SERIES 2003 BONDS - Rate Covenant." The payment of the principal or redemption price of and interest on the Series 1993 A Bonds and the Series 1994 Bonds will be made as described hereinafter under the heading "FINANCING PLAN."

The District may issue additional bonds on a parity with the Series 2003 Bonds and the Prior Bonds for the purpose of (i) financing the costs of acquisition or construction of additions, betterments and improvements to the System, or (ii) the refunding of any outstanding Bonds, or (iii) all of such purposes, subject, in each case, to certain tests and conditions provided for by the Resolution or the Prior Resolutions (the Series 2003 Bonds, the Prior Bonds and any such additional parity bonds are sometimes hereinafter referred to as the "Bonds"). See "SECURITY FOR THE SERIES 2003 BONDS - Additional Parity Bonds."

Payment of the principal of and interest on the Series 2003 Bonds when due will be insured by a financial guaranty insurance policy to be issued by Ambac Assurance Corporation simultaneously with the delivery of the Series 2003 Bonds. See "FINANCIAL GUARANTY INSURANCE" herein.

Brief descriptions of the Series 2003 Bonds, the Resolution, the refunding of the Series 1993 A Bonds and the Series 1994 Bonds, the System, the District, continuing disclosure and certain provisions of the Act, are set forth in this Official Statement, as well as other information contained in the appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Resolution, the Supplemental Resolution, provisions of the Act and other applicable laws of the State are qualified in their entirety by reference to each such document or law. References herein to the Series 2003 Bonds are qualified in their entirety by reference to the form thereof included in the Resolution and the information with respect thereto included in the aforesaid documents. Capitalized terms used and not otherwise defined in this Official Statement have the respective meanings given them in the Resolution.

### FINANCING PLAN

The Series 2003 A Bonds are being issued for the purposes of (i) currently refunding the Series 1993 A Bonds; (ii) advance refunding the Series 1994 Bonds; (iii) funding the Series 2003 A and Series 2003 B Bonds Reserve Account; and (iv) paying all costs of issuance and related costs. The Series 1993 A Bonds will be redeemed on their first available redemption date, being June 15, 2003, and the Series 1994 Bonds will be redeemed on their first available redemption date, being September 1, 2004. The refunding is being undertaken to effect a savings in the aggregate debt service for the District. The moneys and securities required to prepay and defease the Series 1993 A Bonds and the Series 1994 Bonds will be deposited with the West Virginia Municipal Bond Commission (the "Commission"). The Commission will hold the moneys and securities in trust for the payment of the Series 1993 A Bonds and the Series 1994 Bonds for the benefit of the holders thereof.

The District has received approval of the refunding plan from the Public Service Commission of West Virginia (the "PSC").

Concurrently with the delivery of the Series 2003 Bonds, the District will apply certain funds from the proceeds of sale of the Series 2003 Bonds, together with other funds available therefor, to purchase United States Treasury Obligations ("Government Securities") for the defeasance of the Series 1993 A Bonds and the Series 1994 Bonds. The Government Securities deposited with the Commission will be sufficient to pay the principal of, premium and interest on the Series 1993 A Bonds and the Series 1994 Bonds on their redemption dates.

Upon the deposit of the Government Securities with the Commission for the defeasance of the Series 1993 A Bonds and the Series 1994 Bonds, the pledge of Net Revenues, the moneys in the funds and accounts created under the 1993 Resolution and the 1994 Resolution pursuant to which the Series 1993 A Bonds and the Series 1994 Bonds were issued and any other funds pledged by the 1993 Resolution and the 1994 Resolution for the Series 1993 A Bonds and the Series 1994 Bonds will be discharged and satisfied, provided that the Prior Bonds will continue to be secured by the Prior Resolutions.

## Sources and Uses of Funds

### Sources of Funds

Par Amount of Series 2003 Bonds	\$3,360,000.00
Premium	561.15
Accrued Interest on Series 2003 A Bonds	2,316.78
Accrued Interest on Series 2003 B Bonds	5,729.11
Series 1993 A Reserve Account (1)	291,060.00
Series 1994 Reserve Account (1)	<u>177,147.50</u>
TOTAL	\$3,836,814.54

### Uses of Funds

Escrow for Series 1993 A Bonds	\$1,349,308.07
Escrow for Series 1994 Bonds	2,007,358.10
Series 2003 A and Series 2003 B Bonds Reserve Account (2)	319,822.46
Underwriter's Discount	58,800.00
Costs of Issuance	36,775.58
Accrued Interest on Series 2003 A Bonds	2,316.78
Accrued Interest on Series 2003 B Bonds	5,729.11
Bond Insurance Premium	<u>56,704.44</u>
TOTAL	\$3,836,814.54

- (1) Certain moneys held by the West Virginia Municipal Bond Commission in the existing sinking funds (including the reserve accounts) for the Series 1993 A Bonds and the Series 1994 Bonds.
- (2) An amount equal to the maximum amount of principal and interest which will come due on the Series 2003 Bonds in any fiscal year.

## THE SERIES 2003 BONDS

### **General**

The Series 2003 Bonds are dated and bear interest from April 1, 2003, upon original issuance. After original issuance, any Series 2003 Bond issued prior to the first interest payment will be dated April 1, 2003. Any Series 2003 Bond issued on or subsequent to said first interest payment date will be dated as of the interest payment date next preceding the date of authentication thereof; unless the date of authentication is after the Record Date but prior to the applicable interest payment date or on such interest payment date on which interest on said Series 2003 Bond shall have been paid in full or duly provided for, in which case said Series 2003 Bond shall be dated such interest payment date; or, if interest on such Series 2003 Bond shall be in default, as shown by the records of the Registrar, as defined

below, then any Series 2003 Bond issued in exchange for a Series 2003 Bond surrendered for transfer or exchange shall be dated as of the date to which interest has been paid in full. The Series 2003 Bonds will bear interest from their date, payable semiannually on each March 1 and September 1, commencing September 1, 2003, upon original issuance, at the rates per annum and will mature in the years and in the amounts set forth on the cover page of this Official Statement.

The Series 2003 Bonds will be issued as fully registered bonds, in denominations of \$5,000 and integral multiples thereof for any year of maturity. Interest on the Series 2003 Bonds is payable by check or draft made payable and mailed to the owners thereof at the addresses appearing in the books kept by Fifth Third Bank, Cincinnati, Ohio, as registrar (the "Registrar"), for the registration and transfer of bonds (the "Register") as of the fifteenth (15th) day of the month preceding such interest payment date (the "Record Date") or, in the event of a default in the payment of the Series 2003 Bonds, that special record date to be fixed by the Registrar by notice given to the owners not less than 10 days prior to said special record date, or, if requested, in the case of such an owner of \$500,000 or more in principal amount of Series 2003 Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the such interest payment date by such owner. Principal of and premium, if any, on the Series 2003 Bonds is payable to the owner thereof upon surrender thereof at the office of the West Virginia Municipal Bond Commission as paying agent (the "Paying Agent").

### **Book-Entry Bonds**

The Series 2003 Bonds will be available to individual purchasers in book-entry form only. Purchasers of the Series 2003 Bonds will not receive certificates representing their interests in the Series 2003 Bonds purchased.

The Depository Trust Company ("DTC"), New York, New York will act as securities depository ("Securities Depository") for the Series 2003 Bonds. The Series 2003 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond will be issued for each maturity of the Series 2003 Bonds, each in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC is a limited purpose trust company organized under New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds securities that its participants (the "Direct Participants") deposit with DTC. DTC also facilitates the settlement among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Direct Participants' accounts, thereby eliminating the need of physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies,

clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange LLC, the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Direct and Indirect Participants are on file with the Securities and Exchange Commission.

Purchases of the Series 2003 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2003 Bonds in DTC's records. The ownership interest of each actual purchaser of each Series 2003 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the the Series 2003 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2003 Bonds, except in the event that use of the book-entry system for the the Series 2003 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2003 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2003 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2003 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

All redemption notices shall be sent to Cede & Co. If less than all of the Series 2003 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Series 2003 Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the

the Series 2003 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions and dividend payments on the Series 2003 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the District or Paying Agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividends to Cede & Co., (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Paying Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2003 Bonds at any time by giving reasonable notice to the District or the Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.

For every transfer and exchange of the Series 2003 Bonds, the Registrar may charge DTC, and DTC may charge the Participants and the Participants may charge the Beneficial Owners, sums sufficient to cover any tax, fee or other government charge that may be imposed in relation thereto.

In the event the District determines that it is in the best interest of the Beneficial Owners that they may be able to obtain Series 2003 Bond certificates, the District may notify DTC and the Registrar, whereupon DTC will notify the Participants, of the availability through DTC of Series 2003 Bond certificates. In such event, the Registrar shall cause to be issued, transferred and exchanged Series 2003 Bond certificates as requested by DTC as Bondholder in appropriate amounts. DTC may determine to discontinue providing its service with respect to the Series 2003 Bonds at any time by giving notice to the District and the Registrar and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor Securities Depository), the District and the Registrar

shall be obligated to deliver Series 2003 Bond certificates as described in the Resolution. In the event the Series 2003 Bond certificates are issued, the provisions of the Resolution shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal or redemption price of and interest on such Series 2003 Bond certificates. Whenever DTC requests the District and the Registrar to do so, the Registrar and the District will cooperate with DTC in taking appropriate action after reasonable notice (a) to make available one or more separate certificates evidencing the Series 2003 Bonds to any Participant having the Series 2003 Bonds credited to its DTC account or (b) to arrange for another securities depository to maintain custody of certificates evidencing the Series 2003 Bonds.

### **Optional Redemption**

The Series 2003 A Bonds are not subject to redemption prior to maturity.

The Series 2003 B Bonds maturing on and after September 1, 2014, are subject to redemption prior to maturity, at the option of the District, as a whole at any time and in part on any interest payment date, in inverse order of maturity and by random selection within maturities if less than all of any maturity, at a redemption price of par, plus interest accrued to the date fixed for redemption.

Notice of redemption will be given to the registered owner or owners of the Series 2003 B Bonds by the Registrar on behalf of the District by registered or certified mail, at least 30 days and not more than 60 days, prior to the date fixed for redemption.

### **SECURITY FOR THE SERIES 2003 BONDS**

The Series 2003 Bonds are special obligations of the District and are payable as to principal, premium, if any, and interest solely from the sources described below. The District is under no obligation to pay the Series 2003 Bonds except from said sources.

### **Sources of Payment**

The payment of the debt service on the Series 2003 Bonds shall be secured equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with the lien on such Net Revenues in favor of the owners of the Prior Bonds (except the Series 1993 C Bonds), and senior and prior to the lien on such Net Revenues in favor of the owners of the Series 1993 C Bonds. Such Net Revenues derived from the System in an amount sufficient to pay the principal of, premium, if any, and interest on the Series 2003 Bonds and the Prior Bonds and to make all other payments provided for in the Resolution, are irrevocably pledged to such payments as they become due.

### **Rate Covenant**

The District covenants and agrees in the Resolution that the schedule of rates and charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal and interest on the Series 2003 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or subordinate to the Series 2003 Bonds, including the Prior Bonds.

The District shall require that each annual audit contain a statement of the auditor that the District either is or is not in compliance with rate covenant in the Resolution. In the event that any audit contains a statement that the District is not in compliance with the rate covenant contained in the Resolution, the District covenants that it shall, within 60 days of receiving the audit report, file a request with the Public Service Commission of West Virginia for a rate increase sufficient to comply with the above-mentioned rate requirement.

### **Reserve Account**

Pursuant to the Resolution, there will be established with the Commission the Series 2003 A and Series 2003 B Bonds Reserve Account in an amount equal to the Series 2003 A and Series 2003 B Bonds Reserve Requirement. The "Series 2003 A and Series 2003 B Bonds Reserve Requirement" is defined under the Resolution as the lesser of (i) 10% of the original stated principal amount of the Series 2003 A Bonds and the Series 2003 B Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2003 A Bonds and the Series 2003 B Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2003 A Bonds and the Series 2003 B Bonds. Moneys in the Series 2003 A and Series 2003 B Bonds Reserve Account shall be used only to pay principal of and interest on the Series 2003 Bonds as due, when amounts in the respective Sinking Fund are insufficient therefor; provided, that no payments shall be required to be made into the Series 2003 A and Series 2003 B Bonds Reserve Account whenever and as long as the amount deposited therein shall be equal to the Series 2003 A and Series 2003 B Bonds Reserve Requirement. The District is required to restore any withdrawals from the Series 2003 A and Series 2003 B Bonds Reserve Account which have the effect of reducing the assets therein below the reserve requirement, first from the Net Revenues and then from the Renewal and Repayment Fund after all other required payments to the Sinking Funds for the Series 2003 Bonds and the Prior Bonds, including any deficiencies for prior payments, have been made in full.

### **Renewal and Replacement Fund**

The District is required to transfer from the Revenue Fund to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account.

Withdrawals and disbursements from the Renewal and Replacement Fund may be made for: (a) paying costs of replacements, repairs, improvements or extensions to the System or (b) making up any deficiency in any Reserve Account.

### **Application of Revenues**

All Gross Revenues are to be deposited in the Revenue Fund established with a state banking corporation or national banking association selected by the District (the "Depository Bank"), for disposition in the following order of priority: (1) first, to pay the current monthly Operating Expenses of the System; (2) next, remit to the Commission (i) the amounts required by the Prior Resolutions for deposit to the Sinking Funds of the Prior Bonds for payment of interest, if any, on and principal of the Prior Bonds; (ii) for monthly deposit

in the Series 2003A Bonds Sinking Fund and the Series 2003 B Bonds Sinking Fund, a sum equal to 1/6 of the amount of interest which will become due on the Series 2003A Bonds and the Series 2003 B Bonds on the next ensuing semiannual interest payment date and (iii) for monthly deposit in the Series 2003 A Bonds Sinking Fund and the Series 2003 B Bonds Sinking Fund, a sum equal to 1/12 of the amount of principal which will mature or be redeemed and become due on the Series 2003A Bonds and the Series 2003 B Bonds on the next ensuing principal payment date or mandatory redemption date (provided, that until the first interest payment date, the District shall make equal monthly payments into the Sinking Funds in an amount which shall be reduced by any earnings credited to the Sinking Funds, if any, will be sufficient to pay principal and interest due on the first principal and interest date); (3) next, remit to the Commission the amounts required by the Prior Resolutions to be deposited in the respective Reserve Accounts of the Prior Bonds, and then for restoration of any deficiency in the funding of the Series 2003 A and Series 2003 B Bonds Reserve Account; and (4) next, for monthly transfer to the Renewal and Replacement Fund, a sum equal to 2 ½% of Gross Revenues each month, exclusive of any payments for account of any Reserve Account.

As described under "Sources of Payment" above, the Series 2003 Bonds and the Prior Bonds (except the Series 1993 C Bonds) are secured by a first parity lien on the Net Revenues of the System.

### **Enforcement of Collections**

The District covenants in the Resolution to diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals and other charges that shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the PSC and other laws of the State. Under the Act, as hereinafter defined, all such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

The District further covenants and agrees that it will, to the full extent permitted by law and regulations promulgated by the PSC, discontinue and shut off the services and facilities of the System to all delinquent users of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, plus reasonable interest and penalty charges for the restoration of service, has been fully paid. (See "THE SYSTEM - Customer Statistics.")

### **Additional Parity Bonds**

The Resolution provides for the issuance of additional bonds on a parity with the Series 2003 Bonds (limitations on the issuance of parity obligations set forth in the Prior Resolutions shall be applicable) with respect to their lien on the Net Revenues of the System and their source of and security for payment from said Net Revenues (the "Parity Bonds") for the following purposes and under the following conditions:

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions and improvements to the System or refunding any series of Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountant, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- A. The Bonds then Outstanding;
- B. Any Parity Bonds theretofore issued pursuant to the provisions contained in the Resolution then Outstanding; and
- C. The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the District and approved by the PSC, the period for appeal of which has expired prior to the date of issuance of such additional Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountant, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer and approved by the PSC, the period for appeal of which has expired prior to issuance of such additional Parity Bonds.

All covenants and other provisions of the Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with the Resolution. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The District shall comply fully with all the increased payments into the various funds and accounts created in the Resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to the Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the

prior and superior liens of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in the Resolution, equally, as to lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in the Resolution with respect to any Bonds then outstanding, and any other payments provided for in the Resolution, shall have been made in full as required to the date of delivery of the Parity Bonds, and the District shall then be in full compliance with all the covenants, agreements and terms of the Resolution.

## FINANCIAL GUARANTY INSURANCE

### **Payment Pursuant to Financial Guaranty Insurance Policy**

Ambac Assurance has made a commitment to issue a financial guaranty insurance policy (the "Financial Guaranty Insurance Policy") relating to the Series 2003 Bonds effective as of the date of issuance of the Series 2003 Bonds. Under the terms of the Financial Guaranty Insurance Policy, Ambac Assurance will pay to The Bank of New York, in New York, New York or any successor thereto (the "Insurance Trustee") that portion of the principal of and interest on the Series 2003 Bonds which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Obligor (as such terms are defined in the Financial Guaranty Insurance Policy). Ambac Assurance will make such payments to the Insurance Trustee on the later of the date on which such principal and interest becomes Due for Payment or within one business day following the date on which Ambac Assurance shall have received notice of Nonpayment from the Paying Agent. The insurance will extend for the term of the Series 2003 Bonds and, once issued, cannot be canceled by Ambac Assurance.

The Financial Guaranty Insurance Policy will insure payment only on stated maturity dates and on mandatory sinking fund installment dates, in the case of principal, and on stated dates for payment, in the case of interest. If the Series 2003 Bonds become subject to mandatory redemption and insufficient funds are available for redemption of all outstanding Series 2003 Bonds, Ambac Assurance will remain obligated to pay principal of and interest on outstanding Series 2003 Bonds on the originally scheduled interest and principal payment dates including mandatory sinking fund redemption dates. In the event of any acceleration of the principal of the Series 2003 Bonds, the insured payments will be made at such times and in such amounts as would have been made had there not been an acceleration.

In the event the Paying Agent has notice that any payment of principal of or interest on a Series 2003 Bond which has become Due for Payment and which is made to a Holder by or on behalf of the Obligor has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court of competent jurisdiction, such registered owner will be entitled to payment from Ambac Assurance to the extent of such recovery if sufficient funds are not otherwise available.

The Financial Guaranty Insurance Policy does **not** insure any risk other than Nonpayment, as defined in the Policy. Specifically, the Financial Guaranty Insurance Policy does **not** cover:

1. payment on acceleration, as a result of a call for redemption (other than mandatory sinking fund redemption) or as a result of any other advancement of maturity.
2. payment of any redemption, prepayment or acceleration premium.
3. nonpayment of principal or interest caused by the insolvency or negligence of any Trustee, Paying Agent or Bond Registrar, if any.

If it becomes necessary to call upon the Financial Guaranty Insurance Policy, payment of principal requires surrender of the Series 2003 Bonds to the Insurance Trustee together with an appropriate instrument of assignment so as to permit ownership of such Series 2003 Bonds to be registered in the name of Ambac Assurance to the extent of the payment under the Financial Guaranty Insurance Policy. Payment of interest pursuant to the Financial Guaranty Insurance Policy requires proof of Holder entitlement to interest payments and an appropriate assignment of the Holder's right to payment to Ambac Assurance.

Upon payment of the insurance benefits, Ambac Assurance will become the owner of the Series 2003 Bond, appurtenant coupon, if any, or right to payment of principal or interest on such Series 2003 Bond and will be fully subrogated to the surrendering Holder's rights to payment.

### **Ambac Assurance Corporation**

Ambac Assurance Corporation ("Ambac Assurance") is a Wisconsin-domiciled stock insurance corporation regulated by the Office of the Commissioner of Insurance of the State of Wisconsin and licensed to do business in 50 states, the District of Columbia, the Territory of Guam and the Commonwealth of Puerto Rico, with admitted assets of approximately \$6,115,000,000 (unaudited) and statutory capital of approximately \$3,703,000,000 (unaudited) as of December 31, 2002. Statutory capital consists of Ambac Assurance's policyholders' surplus and statutory contingency reserve. Standard & Poor's Credit Markets Services, a Division of The McGraw-Hill Companies, Moody's Investors Service and Fitch, Inc. have each assigned a triple-A financial strength rating to Ambac Assurance.

Ambac Assurance has obtained a ruling from the Internal Revenue Service to the effect that the insuring of an obligation by Ambac Assurance will not affect the treatment for federal income tax purposes of interest on such obligation and that insurance proceeds representing maturing interest paid by Ambac Assurance under policy provisions substantially identical to those contained in its financial guaranty insurance policy shall be treated for federal income tax purposes in the same manner as if such payments were made by the Obligor of the Series 2003 Bonds.

Ambac Assurance makes no representation regarding the Series 2003 Bonds or the advisability of investing in the Series 2003 Bonds and makes no representation regarding,

nor has it participated in the preparation of, the Official Statement other than the information supplied by Ambac Assurance and presented under the heading "FINANCIAL GUARANTY INSURANCE".

#### Available Information

The parent company of Ambac Assurance, Ambac Financial Group, Inc. (the "Company"), is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). These reports, proxy statements and other information can be read and copied at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The SEC maintains an internet site at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding companies that file electronically with the SEC, including the Company. These reports, proxy statements and other information can also be read at the offices of the New York Stock Exchange, Inc. (the "NYSE"), 20 Broad Street, New York, New York 10005.

Copies of Ambac Assurance's financial statements prepared in accordance with statutory accounting standards are available from Ambac Assurance. The address of Ambac Assurance's administrative offices and its telephone number are One State Street Plaza, 19<sup>th</sup> Floor, New York, New York 10004 and (212) 668-0340.

#### Incorporation of Certain Documents by Reference

The following documents filed by the Company with the SEC (File No. 1-10777) are incorporated by reference in this Official Statement:

1. The Company's Current Report on Form 8-K dated January 23, 2003 and filed on January 24, 2003;
2. The Company's Current Report on Form 8-K dated February 25, 2003 and filed on February 28, 2003;
3. The Company's Current Report on Form 8-K dated February 25, 2003 and filed on March 4, 2003;
4. The Company's Current Report on Form 8-K dated March 18, 2003 and filed on March 20, 2003;
5. The Company's Current Report on Form 8-K dated March 19, 2003 and filed on March 26, 2003;
6. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 and filed on March 28, 2003; and

7. The Company's Current Report on Form 8-K dated March 25, 2003 and filed on March 31, 2003.

All documents subsequently filed by the Company pursuant to the requirements of the Exchange Act after the date of this Official Statement will be available for inspection in the same manner as described above in "Available Information".

## THE SYSTEM

### History and Development

The predecessor of Berkeley County Public Service District (the "District") was created by The County Commission of Berkeley County (the "County Commission") in 1954 to provide water service to designated unincorporated areas of Berkeley County. In 2000, the County Commission merged Hedgesville Public Service District and Opequon Public Service District into the District. Such merger was approved by the Public Service Commission of West Virginia in 2001. The District conducts business under the name "Berkeley County Public Service Water District."

The District currently has a capacity to pump 4,633,561 gallons of water per day. The average daily usage from all sources as of June 30, 2002 is 4,076,366 gallons per day, leaving 557,195 gallons of unused capacity. The District's uses a diatomaceous earth filtration (Bunker Hill Plant) and up flow clarification with filtration (Potomac River) water treatment process.

The District's water supply is provided by the Potomac River, LeFever and Ben Speck Springs and Baker Lakes, Baker Heights and Glenwood Forest Wells. The Potomac River, pursuant to a permit from the State of Maryland, yields on average 1,930,000 gallons daily with a maximum of 2,670,000 gallons per day. The various Springs and Wells have a combined maximum daily production level of 2,558,646 gallons, bringing the maximum gallons available daily to 5,228,646 as depicted below.

<u>Water Source</u>	<u>Maximum Gallons Yielded Daily</u>
Potomac River	2,670,000
LeFever Spring	2,250,000
Glenwood Forest Well #1	10,975
Glenwood Forest Well #2	25,671
Glenwood Forest Well #5	40,000
Glenwood Forest Well #6	25,000
Baker Lakes Well	<u>70,000</u>
Total Gallons Available:	5,091,646

As of June 30, 2002, the District had 12,714 customers, of which 11,920 are residential (93.75%), 747 are commercial (5.88%), 19 are industrial (0.15%) and 28 are

public authorities (0.22%). A more detailed description of the District's customer base is detailed herein. See "THE SYSTEM--Customer Statistics."

The District received the EPA Region 3 source water protection award in 2002. The award was received for the District's initiatives to protect the drinking water sources of the residents of Berkeley County. The District, in conjunction with other area entities, coordinated a county-wide source water protection program, to ensure an adequate supply of safe drinking water for its residents for years to come.

### **Public Service Board**

The District is governed by a five-member Public Service Board. The members are appointed by the County Commission for staggered six year terms. Annually at the first calendar year meeting, the Board must elect officers including a Chairman, a Secretary and a Treasurer. The Secretary and Treasurer need not be members of the Board. The Board members, officers, terms and occupations are listed below:

<u>Board</u>	<u>Term</u>	<u>Occupation</u>
William L. Stubblefield, Chairman	7/1/01-6/30/05	Retired
Calvin Bruce Dorsey, Vice-Chairman	7/1/01-6/30/03	Retired
Gregory Rhoe, Secretary	1/23/03-6/30/07	Comptroller
Howard Collins, Treasurer	7/1/01-6/30/05	Retired
D. Wayne Dunham, Parliamentarian	7/1/01-6/30/03	Retired

The Board employs an Executive Director for the System and other personnel and consultants. Paul S. Fisher has served as Executive Director for 1½ years. Mr. Fisher is responsible for the operation, maintenance and administration of the District, and holds a Bachelor of Science in Mineral Economics from Pennsylvania State University. In addition to the Executive Director, the Board has 49 full-time employees and 1 part-time employee.

Hoy Shingleton, Esquire, Martinsburg, West Virginia, provides legal services and CoxHollida LLP, Certified Public Accountants and Consultants, Martinsburg, West Virginia, provides accounting services for the District. Engineering services are obtained by the District as needed for project development and construction.

### **Summary of Capital Improvement Plan**

The District plans to issue its Water Revenue Bonds, Series 2003 C (West Virginia Water Development Authority), in the original aggregate principal amount of \$2,430,000, on or about May 1, 2003, to develop a facilities management plan, construct the Route 45 interconnection, booster pump station, main replacement on Gregory Drive and Botony Drive, replace radio read meter and complete a hydrogeology study.

The District also anticipates the need to perform certain capital improvement and expansion projects over the next 5 years in order to adequately serve the existing customer base as well as have the ability to meet future demands of the System. The plan calls for

approximately \$18,382,600 in various projects. A more detailed description is listed in the table below:

<u>Project Description</u>	<u>Estimated Project Amount</u>
<u>FY Ending 2003 - 2005:</u>	
Ben Speck Plant Upgrade	\$ 83,400
BAN Loan Payoff Amount	\$ 385,000
Ferrel Ridge Water Storage Tank (250,000)	\$ 459,200
Mountain Water Storage Tank Rehabilitation (500,000)	\$ 372,600
Welltown Manor and Stribling Road Water Mains	\$ 251,900
Fort Hill Booster Pump Station	\$ 125,000
Membrane Filtration for Route 9 Well	\$ 600,000
Routh 45 Interconnection Main Replacement	\$1,200,000
Potomac River WTP Upgrade to 4 MGD	\$3,100,000
Radio Meter Reading	\$2,535,000
S. Berkeley and Inwood Quarry Water Source Projects	\$1,500,000
Water Well Exploration	\$1,000,000
County Wide Facilities Strategic Plan	\$ 200,000
In House Development of Water Distribution Maps	<u>\$ 183,000</u>
FY Ending 2003 - 2005 Totals:	\$11,995,100
<u>FY Ending 2006:</u>	
Construction of Treatment Facilities (2 MGD)	<u>\$4,800,000</u>
FY Ending 2006 Totals:	\$4,800,000
<u>FY Ending 2007:</u>	
Telemetry SCADA System (Countywide)	\$ 400,000
Marlowe Water Storage Tank (500,000)	\$ 820,000
Gregory Dr. and Botany Dr. Water Main Replacement	<u>\$ 367,500</u>
FY Ending 2007 Totals:	\$1,587,500
<b>GRAND TOTAL:</b>	<b>\$18,382,600</b>

**Customer Statistics**

The table and chart below depict the customer base of the District for the last 5 fiscal years, both before and after the merger of Hedgesville and Opequon Public Service Districts into the District. Since 1998, the District has seen a growth in its customer base, on a combined District basis, of approximately 24%.

Customer Description	FY 06/30/98		FY 06/30/99		FY 06/30/00		FY 06/30/01		FY 06/30/02	
	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)
Residential	9,505	---	9,992	5.12%	10,417	4.25%	10,923	4.86%	11,920	9.13%
Commercial	721	---	731	1.39%	751	2.74%	755	0.53%	747	-1.06%
Industrial	19	---	20	5.26 %	22	10.00%	23	4.55%	19	-17.39%
Public	<u>16</u>	---	<u>17</u>	<u>6.25 %</u>	<u>17</u>	<u>0.00%</u>	<u>27</u>	<u>58.82%</u>	<u>28</u>	<u>3.70%</u>
Totals:	10,261	---	10,760	4.86%	11,207	4.15%	11,728	4.65%	12,714	8.41%

The table below depicts the future anticipated growth in the District's customer base over the next 3 years.

Customer Description	FY 06/30/03		FY 06/30/04		FY 06/30/05	
	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)
Residential	12,563	5.39%	13,206	5.12%	13,849	4.87%
Commercial	752	0.67%	757	0.66%	762	0.66%
Industrial	20	5.26%	21	5.00%	22	4.76%
Public	<u>29</u>	<u>3.57%</u>	<u>30</u>	<u>3.45%</u>	<u>31</u>	<u>3.33%</u>
Totals:	13,364	5.11%	14,014	4.86%	14,664	4.64%

Source: District

The following table sets forth the ten (10) largest customers of the District and the percentage of total consumption as of June 30, 2002:

<u>Customer Description</u>	<u>Gallons Sold</u>	<u>Percentage Total Consumption</u>
Quad Graphics, Inc.	72,545,800	6.286%
Knouse Foods	26,427,000	2.290%
New IRS Facility-Berkeley Financial Ctr.	22,548,800	1.954%
Dupont	19,547,000	1.694%
Guardian Fiberglass, Inc.	15,255,000	1.322%
IRS Facility-Berkeley Financial Ctr.	10,785,000	0.935%
General Motors #3848	10,226,000	0.886%
Quebecor Printing	5,716,000	0.495%
Variform, Inc.	5,546,000	0.481%
Coast Guard c/o Kenneth Lowe	<u>475,000</u>	<u>0.041%</u>
Totals:	89,071,600	16.383%

The table and chart below depicts the amount of gallons sold for the District, both before and after the merger of Hedgesville and Opequon Public Service Districts into the District for the last 5 fiscal years. Since 1998 the District has seen a growth in sales, on a combined district basis, over 18%.

<u>Customer Description</u>	<u>FY 06/30/98</u>		<u>FY 06/30/99</u>		<u>FY 06/30/00</u>		<u>FY 06/30/01</u>		<u>FY 06/30/02</u>	
	<u>Combined Districts</u>	<u>Change (%)</u>								
Residential	509,373	-	558,468	9.64%	566,185	1.38%	582,827	2.94%	611,122	4.85%
Commercial	233,460	-	267,889	14.75%	287,316	7.25%	278,819	-2.96%	276,859	-0.70%
Industrial	229,885	-	252,549	9.86%	288,095	14.07%	313,205	8.72%	247,507	-20.98%
Public	<u>1,989</u>	-	<u>5,766</u>	<u>44.55%</u>	<u>5,428</u>	<u>-5.86%</u>	<u>13,321</u>	<u>145.41%</u>	<u>18,567</u>	<u>39.38%</u>
Totals	976,707	-	1,084,672	11.05%	1,147,024	5.75%	1,188,172	3.59%	1,154,055	-2.87%

Note: (000) omitted from gallons.

Source: District Billing Records.

## Rates

Pursuant to the Act, rates and charges are set by the Public Service Commission of West Virginia for the use of and the service rendered by the System sufficient for the payment of sums required to be paid into the various sinking funds and to provide for the repair, replacement, maintenance and operation of the System.

## Current Rates

The table below lists the water rates for all 3 divisions of the District, being Bunker Hill, Hedgesville and Opequon:

Rate Description	Bunker Hill Division	Rate Description	Hedgesville Division	Rate Description	Opequon Division
<i>Minimum Charges-Monthly</i>		<i>Minimum Charges-Monthly</i>		<i>Minimum Charges- Monthly</i>	
5/8 Inch Meter	\$14.28	5/8 Inch Meter	\$16.84	5/8 Inch Meter	\$18.09
1 Inch Meter	\$35.70	3/4 Inch Meter	\$25.29	1 Inch Meter	\$45.23
1.5 Inch Meter	\$71.40	1 Inch Meter	\$42.11	1.5 Inch Meter	\$90.45
2 Inch Meter	\$114.24	1.5 Inch Meter	\$84.22	2 Inch Meter	\$144.72
3 Inch Meter	\$214.20	2 Inch Meter	\$134.73	3 Inch Meter	\$271.35
4 Inch Meter	\$357.00	3 Inch Meter	\$252.65	4 Inch Meter	\$452.25
6 Inch Meter	\$714.00	4 Inch Meter	\$421.08	6 Inch Meter	\$904.50
8 Inch Meter	\$1,142.40	6 Inch Meter	\$842.16		
<i>General Domestic, Commercial and Industrial (Per 1,000 Gallons)</i>		<i>General Domestic, Commercial and Industrial (Per 1,000 Gallons)</i>		<i>General Domestic, Commercial (Per 1,000 Gallons)</i>	
First 3,000 Gal. per Mo.	\$4.76	First 3,000 Gal. per Mo.	\$5.61	First 5,000 Gal. per Mo.	\$6.03
Next 2,000 Gal per Mo.	\$4.42	Next 3,000 Gal. per Mo.	\$5.23	Over 5,000 Gal. per Mo.	\$4.53
Next 5,000 Gal. per Mo.	\$4.05	Next 4,000 Gal. per Mo.	\$4.90		
Next 90,000 Gal. per Mo.	\$3.46	Next 10,000 Gal. per Mo.	\$4.55	<i>General Industrial</i>	
Over 100,000 Gal. per Mo.	\$1.76	Over 20,000 Gal. per Mo.	\$4.21	Per 1,000 Gal. per Mo.	\$3.21
<i>Fire Hydrants</i>		<i>Fire Hydrants</i>		<i>Fire Hydrants</i>	
Annual Rental per Hydrant	\$50.00	Public Fire Protection		Per Hydrant	\$88.00
Per Sprinkler Head	\$0.25	Per Hydrant	\$50.00	Fire Use Hose Connection	\$58.67
Hose Connections:		Private Fire Protection		Sprinkler System	\$88.00
1 Inch Openings	\$10.00	Per Hydrant	\$70.00	Per Sprinkler Head	\$0.29
1.25 Inch Openings	\$15.63	Per Sprinkler Head	\$0.25		
1.5 Inch Openings	\$22.50	Fire Use Hose Connection	\$50.00		
Reconnection Fee	\$10.00	Reconnection Fee	\$10.00	Reconnection Fee	\$20.00
Reconnection Charge	\$10.00	Reconnection Charge	\$10.00	Connection Fee	\$300.00
Connection Fee	\$250.00	Connection Fee	\$250.00		

## Billing and Collections

The District bills each customer monthly, based on the actual water meter reading for the previous month. Payments are accepted for twenty days after the billing date before a late penalty of 10% is added. If bills are not paid within thirty days, then water shutoff procedures are commenced. Water service is not restored until the account is settled in full.

The table and chart below depict the operating revenues of the District, both before and after the merger of Hedgesville and Opequon Public Service Districts into the District for the last 5 fiscal years. Since 1998 the District has seen a growth in operating revenues, on a combined District basis, of over 25%.

Customer Description	FY 06/30/98		FY 06/30/99		FY 06/30/00		FY 06/30/01		FY 06/30/02	
	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)	Combined Districts	Change (%)
Residential	\$2,504,375	-	\$2,678,500	6.95%	\$2,714,216	1.33%	\$2,775,508	2.26%	\$3,061,774	10.31%
Commercial	\$887,511	-	\$1,001,677	12.86%	\$1,035,328	3.36%	\$975,342	-5.79%	\$1,036,728	6.29%
Industrial	\$364,230	-	\$436,624	19.88%	\$533,316	22.15%	\$584,495	9.60%	\$528,176	-9.64%
Public	\$26,887	-	\$30,345	12.86%	\$29,973	-1.23%	\$63,942	113.33%	\$72,045	12.67%
Fire Protection	<u>\$8,412</u>	-	<u>\$8,999</u>	<u>6.98%</u>	<u>\$14,370</u>	<u>59.68%</u>	<u>\$15,879</u>	<u>10.50%</u>	<u>\$51,879</u>	<u>221.76%</u>
Totals:	\$3,791,415	-	\$4,156,145	9.62%	\$4,327,203	4.12%	\$4,415,166	2.03%	\$4,749,815	7.58%

Source: District

The District has covenanted to diligently enforce and collect all fees and charges as described in "SECURITY FOR THE SERIES 2003 BONDS -- Enforcement of Collections" herein.

## System Budget and Expenditure

An operating budget is prepared annually by the Executive Director and is required by the Act to be submitted to the Board no later than 45 days before the new fiscal year begins. The budget is compared to actual year-to-date revenues and expenditures monthly.

## Method of Accounting

The District maintains its accounts on an accrual basis and prepares its financial statements in accordance with generally accepted accounting principles. Cox Nichols Hollida, Certified Public Accountants and Consultants, LLP, Martinsburg, West Virginia, audited the records of the District for the fiscal years ended June 30, 2002 (See "Appendix B - Audited Financial Statement for Fiscal Year Ended June 30, 2002".)

## Retirement System

All full-time employees of the District are covered by the West Virginia Public Employees Retirement System, cost-sharing multi-employer PERS.

All full-time employees are eligible and must participate in the State PERS. The pension plan provides pension benefits, deferred allowances, and death and disability benefits. A member may retire after reaching the age of 60 and accumulating 5 years of credited service in force. Benefits generally vest in varying degrees once a member attains 5 or more years of credited service in force. Employees who retire at age 60 with 5 or more years of credited service in force are entitled to pension payments for the rest of their lives equal to 2% of their highest three-year average salary times the number of years for which they were employed as a participant in the State PERS.

Pension provisions include annuity options to provide benefits to a member's nominated beneficiary if so elected. In addition, disability retirement is provided for members who meet certain requirements as specified in the Act. The District's covered payroll amounted to \$1,290,699 for the year ended June 30, 2002.

Employees of the District are required to pay 4.5% of their gross earnings to the pension plan. The District makes annual contributions to the plan equal to 9.5% of its covered payroll. Total contributions made during the fiscal year ended June 30, 2002 amounted to \$180,698, of which \$58,082 was made by employees. Information regarding the plan is available from the state of West Virginia.

### Summary of Historical Revenues and Expenses

The table below lists the net income of the District for the last 6 fiscal years as filed with the Public Service Commission of West Virginia. For fiscal years ending June 30, 1997-2001, the numbers depicted represent the combined totals of the three separate districts. For fiscal year ending June 30, 2002, the numbers depicted represent the first year of operation of the District following the merger.

Description	06/30/97	06/30/98	06/30/99	06/30/00	06/30/01	06/30/02
Operating Revenues	\$3,722,836	\$3,987,428	\$4,406,717	\$4,560,435	\$4,662,414	\$5,098,925
Operating Expenses:						
Operation & Maintenance Expenses	2,395,327	2,114,464	2,347,429	2,553,361	2,633,680	3,286,664
Depreciation Expenses	916,662	1,011,760	1,115,919	1,087,333	1,099,462	1,151,487
Amortization	712	712	712	712	712	
Taxes other than income taxes	88,089	78,448	87,847	93,178	89,273	110,180
<b>TOTAL OPERATING EXPENSES</b>	<b>3,400,790</b>	<b>3,205,384</b>	<b>3,551,907</b>	<b>3,734,584</b>	<b>3,823,127</b>	<b>4,548,331</b>
Operating Income	322,046	782,044	854,810	825,851	839,286	550,594
Gains (losses) from disposition of utility property			74,107			
<b>TOTAL OPERATING INCOME</b>	<b>322,046</b>	<b>782,044</b>	<b>780,703</b>	<b>825,851</b>	<b>839,286</b>	<b>550,594</b>
<b>OTHER INCOME AND DEDUCTIONS</b>						
Non-operating rental Income	4,000	6,500	6,000	10,750	14,500	
Interest and dividend Income	117,184	120,288	134,335	131,941	152,136	109,394
Misc. non-operating Income	156,859	233,260				3,262,513

Gains (losses) from disposition of property	13,204	(150,777)			95,180	
<b>TOTAL OTHER INCOME</b>	<u>291,247</u>	<u>209,271</u>	<u>140,335</u>	<u>142,691</u>	<u>261,816</u>	<u>3,371,907</u>
Misc. Income deductions		(49,200)				
<b>TOTAL INCOME DEDUCTIONS</b>	<u>0</u>	<u>(49,200)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net other Income and deductions	291,247	160,071	140,335	142,691	261,816	3,371,907
<b>INTEREST CHARGES</b>						
Interest on long term debt	1,006,544	1,008,783	1,011,661	992,034	987,125	1,093,025
Amortization of debt discount and expense	14,390	18,748	19,068	18,098	18,099	18,356
Other Interest expense	34,894	75,273	34,447	35,019	49,354	
<b>TOTAL INTEREST CHARGE</b>	<u>1,055,828</u>	<u>1,102,804</u>	<u>1,065,176</u>	<u>1,045,151</u>	<u>1,054,578</u>	<u>1,111,381</u>
Income before extraordinary items	(455,739)	(160,689)	(144,139)	(76,609)	46,524	2,811,120
<b>EXTRAORDINARY ITEMS</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>NET INCOME</b>	<u>(\$455,739)</u>	<u>(\$160,689)</u>	<u>(\$144,139)</u>	<u>(\$76,609)</u>	<u>\$46,524</u>	<u>\$2,811,120</u>

Source: 1997-2001 numbers are from combined totals of the PSC reports of the 3 separate districts; 2002 numbers are from District's Audited Financial Statements

### Annual Debt Service Requirements

The following table sets forth for each fiscal year during which the Series 2003 Bonds will be outstanding and the amounts payable from Net Revenues as principal of and interest on the Series 2003 Bonds and the Prior Bonds.

## DEBT SERVICE REQUIREMENTS

FY Ending June 30	2003A	2003A	2003B	2003B	Total	Additional	LESS:	Total
	Bonds Principal	Bonds Interest*	Bonds Principal	Bonds Interest*	Gross Payments	System Gross Payments	DSR Principal Reduction	System Net Payments
2004	\$300,000	\$24,047	\$50,000	\$57,501	\$431,548	\$1,134,493		\$1,566,040
2005	\$265,000	\$22,760	\$75,000	\$89,370	\$432,130	\$1,134,211		\$1,566,341
2006	\$275,000	\$17,460	\$75,000	\$67,870	\$435,330	\$1,133,913		\$1,569,243
2007	\$280,000	\$11,980	\$75,000	\$66,370	\$433,330	\$1,133,592		\$1,566,922
2008	\$110,000	\$5,800	\$50,000	\$65,033	\$230,833	\$1,133,252		\$1,364,084
2009	\$50,000	\$3,050	\$260,000	\$60,545	\$373,595	\$1,132,888	\$146,156	\$1,360,327
2010	\$50,000	\$1,600	\$60,000	\$55,745	\$167,345	\$1,132,500		\$1,299,845
2011			\$120,000	\$52,865	\$172,865	\$1,132,085		\$1,304,950
2012			\$125,000	\$48,666	\$173,666	\$1,131,643		\$1,305,310
2013			\$125,000	\$44,135	\$169,135	\$1,131,172		\$1,300,307
2014			\$130,000	\$39,353	\$169,353	\$1,130,670		\$1,300,022
2015			\$135,000	\$34,216	\$169,216	\$1,130,132		\$1,299,348
2016			\$140,000	\$28,750	\$168,750	\$1,129,560		\$1,298,310
2017			\$145,000	\$22,978	\$167,978	\$1,128,948	\$82,447	\$1,214,479
2018			\$150,000	\$16,855	\$166,855	\$1,045,850	\$82,447	\$1,130,258
2019			\$155,000	\$10,373	\$165,373	\$962,707		\$1,128,079
2020			\$160,000	\$3,520	\$163,520	\$961,966	\$173,666	\$951,819
2021						\$961,173		\$961,173
2022						\$960,327		\$960,327
2023						\$959,424		\$959,424
2024						\$958,462		\$958,462
2025						\$957,435		\$957,435
2026						\$956,339		\$956,339
2027						\$955,168		\$955,168
2028						\$953,920		\$953,920
2029						\$952,586		\$952,586
2030						\$951,165		\$951,165
						\$949,647		\$949,647
						\$948,027	\$43,620	\$904,407
						\$1,607,897	\$748,082	\$859,815
						\$174,998		\$174,998
						\$174,772		\$174,772
						\$174,533	\$46,528	\$128,005
						\$129,025		\$129,025
						\$128,848		\$128,848
						\$128,660		\$128,660
						\$128,461	\$132,082	(\$3,621)
Totals:	\$1,330,000	\$86,677	\$2,030,000	\$744,144	\$4,190,820	\$32,930,447	\$1,455,028	\$35,666,239

\* Payment is Reduced by Accrued Interest & Contingency Funds

## **Coverage Ratios**

Under the Resolution, the District has covenanted to collect fees and charges such that Net Revenues available for debt service are not less than 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2003 Bonds and all other obligations secured by a lien or payable from such revenues prior to or on a parity with the Series 2003 Bonds, including the Prior Bonds. See "SECURITY FOR THE SERIES 2003 BONDS -- Rate Covenant" herein.

Following the first year of operations after the merger (June 30, 2002), an independent certified public accountant has verified that the District does not meet the rate coverage requirements of the Prior Bonds. The District petitioned and obtained approval from the Public Service Commission of West Virginia for a water rate increase effective November 8, 2002. This rate increase is anticipated to provide adequate additional revenues to satisfy future debt service coverage requirements. The table below lists the coverage amounts for fiscal year ending June 30, 2002 and projected fiscal years ending June 30, 2003 and 2004.

<u>Description</u>	<u>Audited Financials FY 2002 (1)</u>	<u>Proforma Financials FY 2003 (2)</u>	<u>Proforma Financials FY 2004</u>
<b>Operating Revenue</b>			
Metered Water Sales	\$4,844,058	\$4,844,058	\$4,844,058
Estimated Additional Revenues From Rate Increase	0	\$103,333	\$155,000
Penalties, Etc.	\$104,475	\$104,475	\$104,475
Other Income	\$150,392	\$150,392	\$150,392
Total Operating	\$5,098,925	\$5,202,258	\$5,253,925
<b>Operating Expenses</b>			
Operating Expenses	\$3,396,844	\$3,396,844	\$3,396,844
Depreciation	\$1,151,487	\$1,151,487	\$1,151,487
Total Operating	\$4,548,331	\$4,548,331	\$4,548,331
<b>Non-Operating Income</b>			
Interest Income	\$109,394	\$109,394	\$109,394
Operating Income	\$659,988	\$763,321	\$814,988
Add Back Depreciation	\$1,151,487	\$1,151,487	\$1,151,487
Net Available for Debt Service	\$1,811,475	\$1,914,808	\$1,966,475
Maximum Annual Payment for First Lien Bonds	\$1,601,568	\$1,571,980	\$1,577,915
Estimated Prepayment Due on Series 1997 Bonds	\$82,371	\$82,371	\$82,371
Total Debt Service Requirements	\$1,683,939	\$1,654,351	\$1,660,286
Net Available After First Lien Payments	\$127,536	\$260,457	\$306,189
 <i>Coverage Ratio</i>	 <i>107.60%</i>	 <i>115.74%</i>	 <i>118.44%</i>

(1) Debt Service Coverage Prior to Refunding of Series 1993 A Bonds and Series 1994 Bonds

(2) Debt Service Coverage Estimated After Refunding of Series 1993 A Bonds and Series 1994 Bonds & Including Projected Increase in Operating Revenues from Rate Increase Effective November 8, 2002.

Source: District

## LITIGATION

There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body, now pending or, to the best knowledge of the District, threatened or affecting the District (or, to the District's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would have a material adverse affect on the District's financial position or on the validity of the Series 2003 Bonds, the Resolution, or any agreement to which the District is a party and which is a part of the issuance of the Series 2003 Bonds.

## LEGAL MATTERS

The authorization and issuance of the Series 2003 Bonds are subject to the approval of legality by Steptoe & Johnson PLLC, Charleston, West Virginia, Bond Counsel. Bond Counsel will render an opinion in substantially the form set forth in Appendix C to this Official Statement. Certain legal matters will be passed upon for the District by its counsel, Hoy Shingleton, Martinsburg, West Virginia, and for the Underwriter by its counsel, Jackson Kelly PLLC, Charleston, West Virginia.

## TAX MATTERS

In the opinion of Steptoe & Johnson PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2003 Bonds (a) is excludable from gross income for federal income tax purposes, assuming compliance with certain provisions described herein pertaining to the Internal Revenue Code of 1986, as amended (the "Code"), (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, and (c) under existing West Virginia law, the Series 2003 Bonds are exempt from taxation by the State of West Virginia and the other taxing bodies of the State and the interest on the Series 2003 Bonds is exempt from personal and corporate income taxes imposed directly thereon by the State West Virginia. For the purposes of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income.

Bond Counsel is further of the opinion that pursuant to Section 265 (b) (3) (D) (ii) of the Code, the Series 2003 A Bonds shall be treated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code and shall be deemed so designated as the Series 2003 A Bonds and the issue of which they are a part satisfy the requirements set forth in Section 265 (b) (3) (D) (ii). Therefore, the Series 2003 A Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b) (3) of the Code, and the provision of the Code which disallows all deductibility of interest expense incurred by financial institutions on debt incurred or to purchase or carry most tax-exempt obligations does not apply to the Series 2003 A Bonds. Accordingly, 80% of the interest expense of a financial institution incurred for the purpose of purchasing or carrying the Series 2003 A Bonds is deductible for federal income tax purposes.

The opinions described above are subject to the condition that the District complies on a continuing basis with all requirements of the Code that must be satisfied subsequent to issuance of the Series 2003 Bonds for interest thereon to be or continue to be excluded from gross income for federal income tax purposes. The District has covenanted to comply with each such requirement. Failure to comply with certain of such requirements could cause the interest on the Series 2003 Bonds to be included in the gross income of the recipients thereof for purposes of federal income taxation retroactively to the date of issuance of the Series 2003 Bonds.

The accrual or receipt of the interest on the Series 2003 Bonds may otherwise affect the federal income tax liability of certain recipients. The extent of these and other consequences will depend upon the recipient's particular tax status or other consequences will depend upon the recipient's particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences, and investors should consult

their tax advisors regarding the tax consequences of purchasing or holding the Series 2003 Bonds.

A copy of the proposed form of opinion of Bond Counsel is attached hereto as Exhibit C.

#### UNDERWRITING

Ross, Sinclair & Associates, as Underwriter, has agreed, subject to certain conditions, to purchase the Series 2003 Bonds from the District at a price of \$3,301,761.15. The Underwriter will be obligated to purchase all of the Series 2003 Bonds if any are purchased. The Series 2003 Bonds may be offered and sold to certain dealers (including investment trusts, certain of which may be sponsored or managed by the Underwriter) at prices lower than the public offering price stated on the cover page of this Official Statement, and such public offering price also may be changed without prior notice, from time to time, by the Underwriter.

#### ACCOUNTANT'S CALCULATIONS

CoxHollida LLP, Certified Public Accountants and Consultants, Martinsburg, West Virginia, independent certified public accountants, will certify the debt service savings, coverage requirement and parity test requirement.

#### FINANCIAL STATEMENTS OF THE DISTRICT

Included herein as Appendix B is the audited financial statement (and reports with respect thereto) of the District as of June 30, 2002, prepared by Cox Nichols Hollida, Certified Public Accountants and Consultants, LLP, Martinsburg, West Virginia. The financial statement has been included herein in reliance upon the reports of the preparers thereof as experts in auditing and accounting.

#### CONTINUING DISCLOSURE

The District has agreed in the Resolution to an undertaking (the "Undertaking") for the benefit of the Registered Owners of the Series 2003 Bonds to provide:

- (a) within 180 days after the end of its 2003 fiscal year and each subsequent fiscal year, to each nationally recognized municipal securities information repository and to any West Virginia State information depository ("State Depository"), core financial information and operating data for the prior fiscal year, including (i) the District's audited general purpose financial statements, prepared in accordance with generally accepted accounting principles in effect from time to time, and (ii) material historical quantitative data on the District's revenues, expenditures, and financial operations of the type found in this Official Statement under the caption "The System"; and

- (b) in a timely manner, to each nationally recognized municipal securities information repository ("National Repository") or to the Municipal Securities Rulemaking Board ("MSRB"), and to State Depository, notice of any of the following events with respect to the Series 2003 Bonds, if material:
- (1) principal and interest payment delinquencies;
  - (2) non-payment related defaults;
  - (3) unscheduled draws on debt service reserves reflecting financial difficulties;
  - (4) unscheduled draws on credit enhancements reflecting financial difficulties;
  - (5) substitution of credit or liquidity providers, or their failure to perform;
  - (6) adverse tax opinions or events affecting the tax-exempt status of the security;
  - (7) modifications to rights if security holders;
  - (8) bond calls;
  - (9) defeasances;
  - (10) release, substitution, or sale of property securing repayment of the securities;
  - (11) rating changes; and
  - (12) failure of the District to comply with clause (a) above.

With respect to Event (8), the District does not undertake to provide the above-described event notice of a mandatory scheduled redemption, not otherwise contingent upon the occurrence of an event, if the terms, dates and amounts of redemption are set forth in detail herein, the only open issue is which bonds will be redeemed in the case of a partial redemption, notice of redemption is given to the Bondholders as required under the terms of the Series 2003 Bonds and public notice of the redemption is given pursuant to 1934 Act Release No. 23856 of the SEC, even if the originally scheduled amounts are reduced by prior optional redemptions or Bond purchases.

Any of the foregoing information may be supplied by including by specific reference information previously supplied to each National Repository and the State Depository or the Securities and Exchange Commission ("SEC"). Information will not be included by reference from any final official statement unless such final official statement is available from the MSRB.

This continuing disclosure obligation is being undertaken by the District to assist the Underwriter in complying with Rule 15c2-12 promulgated by the SEC. The District has agreed to give notice in a timely manner to each National Repository, or the MSRB, and to Depository of any failure to supply the requested information. However, any such failure will not constitute a default under the terms of the Series 2003 Bonds. Registered Owners may contact the Executive Director of the District at P.O. Box 737, Martinsburg, West Virginia 25402, (304) 267- 4600 for more information.

MISCELLANEOUS

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the owners of the Series 2003 Bonds.

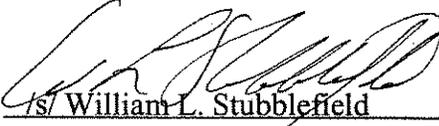
Copies of the Resolution, the Undertaking and other applicable documents may be obtained from the District at the following address:

Berkeley County Public Service District  
P.O. Box 737  
Martinsburg, West Virginia 25402  
Attention: Executive Director  
(304) 267- 4600

or, during the period of offering the Series 2003 Bonds, from the Underwriter.

The execution and distribution of this Official Statement has been duly authorized by the District.

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

  
By: /s/ William L. Stubblefield  
Chairman

## Appendix A

### Berkeley County Public Service District

Berkeley County Public Service District is located in Berkeley County, West Virginia. The County seat, Martinsburg, is known as the "Gateway to the Shenandoah Valley." Berkeley County is located just 90 minutes from the Washington, D.C./Baltimore, Maryland area. It is bounded in the north by the Potomac River and Washington County, Maryland; on the east by Jefferson County, West Virginia; on the south by Frederick County, Virginia; and, on the west by Hardy and Morgan Counties of West Virginia.

In the fall of 1992, the U.S. Census Bureau included Berkeley County as part of the Washington, D.C./Baltimore, Maryland Standard Metropolitan Statistical Area. Berkeley County's proximity to this metropolitan area is the driving force behind the growth experienced by the Eastern Panhandle and the County. The transportation access, Interstate 81, West Virginia Route 9 and the MARC train, have aided in making the area a prime location for business, industry and commuters. Major industries in the Berkeley County today include General Motors, Quad Graphics, Aker Plastics and Quebecor Printing.

The 2001 estimated population of Berkeley County is approximately 79,202 people with a 32.4% population growth between 1990 and 2001.

<b>Population Year</b>	<b>Population Amount</b>	<b>Percentage Change</b>
2001	79,202	3.64%
2000	76,423	4.91%
1999	72,846	2.57%
1998	71,021	2.85%
1997	69,053	1.82%
1996	67,822	2.11%
1995	66,421	1.80%
1994	65,245	1.99%
1993	63,971	1.99%
1992	62,721	2.10%
1991	61,429	2.71%
1990	59,810	27.87%
1980	46,775	---

*Source: 2002 U. S. Census Bureau*

Major communities within reasonable traveling distance of Berkeley  
County include:

<b>Community Name</b>	<b>Approximate Distance (Miles)</b>
Washington, DC	80
Baltimore, MD	90
Hagerstown, MD	18
New York, NY	264
Philadelphia, PA	180
Harrisburg, PA	93
Richmond, VA	180
Winchester, VA	22

The following table represents the current labor force and employment data for Berkeley County and the state of West Virginia:

Calendar Year	Area	Civilian Labor Force	Total Employment	Total Unemployment	Unemployment Rate
2001	Berkeley County	38,060	36,630	1,420	3.70%
	West Virginia	833,000	792,000	41,000	4.90%
2000	Berkeley County	36,740	35,660	1,080	2.90%
	West Virginia	825,000	779,000	46,000	5.50%
1999	Berkeley County	35,710	34,400	1,310	3.70%
	West Virginia	816,000	763,000	54,000	6.60%
1998	Berkeley County	34,300	32,970	1,340	3.90%
	West Virginia	797,000	744,000	53,000	6.60
1997	Berkeley County	33,480	31,960	1,530	4.60%
	West Virginia	803,000	748,000	55,000	6.90%

*Source: April 2002 West Virginia Bureau of Employment Programs*

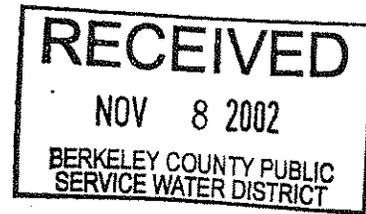
The table below lists the largest employers of Berkeley County, West Virginia, as of December, 2002:

<b>Employer</b>	<b>Number of Employees</b>	<b>Percentage of Employment</b>
Berkeley County Schools	1,875	5.120%
Veterans Administration Center	1,242	3.390%
IRS-Martinsburg Computing Center	1,050	2.870%
City Hospital, Inc.	931	2.540%
Quad/Graphics, Inc.	900	2.460%
General Motors, Corp.	599	1.640%
Bureau of Alcohol, Tobacco & Firearms	599	1.090%
Aker Plastics Martinsburg, Inc.	400	1.090%
Quebecor Printing	400	1.080%
West Virginia Air National Guard	396	0.930%
	339	

*Source: 2002 Berkeley County Development Authority*

Appendix B

Audited Financial Statement for Fiscal Year Ended June 30, 2002



**BERKELEY COUNTY PUBLIC  
SERVICE WATER DISTRICT**

FINANCIAL STATEMENTS

June 30, 2002

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CERTIFIED PUBLIC ACCOUNTANTS  
AND CONSULTANTS, LLP

**INDEPENDENT AUDITORS' REPORT ON FINANCIAL STATEMENTS AND SUPPLEMENTAL INFORMATION**

The Members of the Public Service Board  
Berkeley County Public Service Water District

We have audited the accompanying general purpose financial statements of the Berkeley County Public Service Water District ("District") as of and for the year ended June 30, 2002, as listed in the table of contents. These general purpose financial statements are the responsibility of the District's management. Our responsibility is to express an opinion on these general purpose financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the general purpose financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the general purpose financial statements referred to above present fairly, in all material respects, the financial position of the Berkeley County Public Service Water District as of June 30, 2002, and the results of its operations, changes in contributed capital, retained earnings and cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

In accordance with Government Auditing Standards, we have also issued our report dated September 30, 2002, on our consideration of the District's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grants. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be read in conjunction with this report in considering the results of our audit.

Our audit was performed for the purpose of forming an opinion on the general purpose financial statements taken as a whole. The accompanying financial information on page 21 is supplemental information presented for purposes of additional analysis and is not a required part of the general purpose financial statements of the Berkeley County Public Service Water District. Such information has been subjected to the auditing procedures applied in the audit of the general purpose financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the general purpose financial statements taken as a whole.

*Cox Nichols Hollida, CPAs  
and Consultants, LLP*

Martinsburg, West Virginia  
September 30, 2002

Berkeley County Public Service Water District

**BALANCE SHEET**

June 30, 2002

**ASSETS**

**CURRENT ASSETS**

Cash and temporary investments	\$ 363,888
Accounts receivable - customers (net of allowance of \$11,000)	541,134
Inventory	32,916
Other current assets	<u>9,531</u>
Total current assets	<u>947,469</u>

**RESTRICTED ASSETS**

Debt service funds	1,021,526
Debt service reserve funds	1,407,424
Construction funds	615,413
Renewal and replacement funds	593,665
Customer deposits	<u>266,815</u>
Total restricted assets	<u>3,904,843</u>

Total current and restricted assets 4,852,312

**UTILITY PLANT**

Utility plant in service	45,982,107
Construction in progress	1,073,980
Less accumulated depreciation and amortization	<u>(14,316,141)</u>
Net utility plant	<u>32,739,946</u>

**OTHER ASSETS**

Unamortized debt issue expense	<u>308,264</u>
--------------------------------	----------------

Total assets \$ 37,900,522

The accompanying notes are an integral part of this statement

Berkeley County Public Service Water District

**BALANCE SHEET (Continued)**

June 30, 2002

**LIABILITIES**

**CURRENT LIABILITIES (payable from current assets)**

Bond anticipation note payable	\$ 385,000
Line of credit payable	59,000
Lease payable (due within one year)	96,094
Accounts payable	41,605
Accrued expenses	95,854
Accrued payroll taxes	13,986
Advances for construction - developers (due within one year)	<u>34,000</u>

Total current liabilities (payable from current assets) 725,539

**CURRENT LIABILITIES (payable from restricted assets)**

Accrued interest expense	279,046
Construction payables	105,605
Customer deposits	284,775
Revenue bonds payable (due within one year)	<u>559,306</u>

Total current liabilities (payable from restricted assets) 1,228,732

Total current liabilities 1,954,271

**LONG-TERM LIABILITIES**

Advances for construction - developers	124,751
Lease payable	971,452
Revenue bonds payable	<u>18,365,028</u>

Total long-term liabilities 19,461,231

Total liabilities 21,415,502

**CONTRIBUTED CAPITAL AND RETAINED EARNINGS**

**CONTRIBUTED CAPITAL** 11,827,684

**RETAINED EARNINGS**

Reserved	2,676,111
Unreserved	<u>1,981,225</u>

Total retained earnings 4,657,336

Total contributed capital and retained earnings 16,485,020

Total liabilities, contributed capital and retained earnings \$ 37,900,522

The accompanying notes are an integral part of this statement

Berkeley County Public Service Water District

**STATEMENT OF INCOME**

For the year ended June 30, 2002

<b>OPERATING REVENUES</b>	
Metered water sales - domestic	\$ 3,207,109
- commercial	1,036,728
- industrial	528,176
- governmental	72,045
Customers' forfeited discounts and penalties	104,475
Other operating income	<u>150,392</u>
Total operating revenues	5,098,925
<b>OPERATING EXPENSES</b>	
	<u>3,396,844</u>
Operating income before depreciation	1,702,081
<b>DEPRECIATION</b>	
	<u>1,151,487</u>
Operating income	<u>550,594</u>
<b>NON-OPERATING INCOME</b>	
Interest income	<u>109,394</u>
	<u>659,988</u>
<b>NON-OPERATING EXPENSES</b>	
Interest expense	1,093,025
Amortization	<u>18,356</u>
Total non-operating expenses	<u>1,111,381</u>
Loss before capital contributions	<u>(451,393)</u>
<b>CAPITAL CONTRIBUTIONS</b>	
	<u>3,262,513</u>
Net income	\$ <u>2,811,120</u>

The accompanying notes are an integral part of this statement

Berkeley County Public Service Water District  
**STATEMENT OF CHANGES IN CONTRIBUTED CAPITAL**  
For the year ended June 30, 2002

**CONTRIBUTIONS IN AID OF CONSTRUCTION**

Customers and governmental entities	
Balance at beginning of year	\$ 11,889,332
Prior period adjustment	<u>(61,648)</u>
<b>BALANCE AT END OF YEAR</b>	<b>\$ <u>11,827,684</u></b>

The accompanying notes are an integral part of this statement

Berkeley County Public Service Water District

**STATEMENT OF RETAINED EARNINGS**

For the year ended June 30, 2002

Balance, at beginning of year	\$ 1,714,453
Prior period adjustments	<u>131,763</u>
Balance, at beginning of year, as restated	1,846,216
Net income	<u>2,811,120</u>
Balance, at end of year	\$ <u>4,657,336</u>

The accompanying notes are an integral part of this statement

Berkeley County Public Service Water District

**STATEMENT OF CASH FLOWS**

For the year ended June 30, 2002

**CASH FLOWS FROM OPERATING ACTIVITIES**

Operating income	\$ 550,594
Adjustments to reconcile operating income to net cash provided by operating activities:	
Prior period adjustments	70,115
Depreciation	1,151,487
Adjustments for changes in operating assets and liabilities	
(Increase) in operating assets	(55,352)
Increase in operating liabilities	<u>160,608</u>
Net cash provided by operating activities	<u>1,877,452</u>

**CASH FLOWS FROM INVESTING ACTIVITIES**

Interest received	109,394
Redemption of certificates of deposit (net)	<u>(240,124)</u>
Net cash used by investing activities	<u>(130,730)</u>

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Proceeds from revenue bonds payable	2,010,000
Principal payments on revenue bonds payable	(522,247)
Principal payments on capital lease payable	(24,824)
Net payments made on line of credit payable	(100,875)
Interest paid	(1,093,025)
Payments made for advances for construction-developers	(36,503)
Capital expenditures for utility plant	(1,383,784)
Payment of bond issuance costs	(24,750)
Payments received for service connections	<u>110,251</u>
Net cash used in capital and related financing activities	<u>(1,065,757)</u>

Net increase in cash and cash equivalents 680,965

**CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR** 3,090,805

**CASH AND CASH EQUIVALENTS AT END OF YEAR** \$ 3,771,770

**SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING  
AND FINANCING ACTIVITIES**

Main line extensions contributed by developers	\$ <u>3,152,263</u>
Utility plant financed by capital leases	\$ <u>1,072,953</u>

The accompanying notes are an integral part of this statement

Berkeley County Public Service Water District

**NOTES TO FINANCIAL STATEMENTS**

June 30, 2002

**GENERAL**

The Berkeley County Public Service Water District ("District") is a public corporation created under the laws of the State of West Virginia on December 12, 1954, for the purpose of operating a water utility and providing water services to customers in its franchise area within Berkeley County. On July 1, 2001, the former Opequon Public Service District and the former Hedgesville Public Service District merged into the Berkeley County Public Service District pursuant to an order made by the Berkeley County Commission and approved by the Public Service Commission of West Virginia. The Berkeley County Public Service District conducts business under the name of the Berkeley County Public Service Water District.

**Reporting Entity**

For financial reporting purposes, the District is considered an independent reporting entity. The basic criteria for defining the District as an independent reporting entity is the District's financial independence, accountability for fiscal matters, significant influence on operations and ability to designate management.

**Fund Accounting**

The accounts of the District are organized on the basis of fund accounting under one fund, an enterprise fund. The enterprise fund is a proprietary fund type that is used to account for all District operations because the District's operations are similar to that of private business enterprises.

**SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The financial statements of the District are prepared in accordance with Generally Accepted Accounting Principles (GAAP). As a proprietary fund type, the District applies all Financial Accounting Standards Board (FASB) pronouncements and Accounting Principles Board (APB) opinions issued on or before November 30, 1989, unless those pronouncements conflict with or contradict Governmental Accounting Standards Board (GASB) pronouncements, in which case, GASB prevails. As required for periods beginning after June 15, 2000 by Statement 33 of the Government Accounting Standards Board, Accounting and Financial Reporting for Nonexchange Transactions, the District has begun recognizing capital contributions as revenue in the current year, rather than as contributed capital. No adjustment to the balance of the contributed capital account is required.

The accrual basis of accounting is used. Revenues are recognized in the accounting period in which they are earned and become measurable and expenses are recognized in the period incurred, if measurable.

Utility plant is stated at cost at the date of acquisition. Donated assets, principally water lines, are recorded at an amount which approximates the donor's cost and are recorded as capital contributions. Depreciation is provided on the straight-line method at various rates calculated to allocate the costs of the respective items over their estimated useful lives ranging from 4 to 50 years. Interest paid on loans obtained for construction of plant facilities is capitalized when material. Maintenance and repairs are charged to expense as incurred; major renewals and betterments are capitalized. When items of property or equipment are sold or retired, the related cost and accumulated depreciation are removed from the accounts and any gain or loss is included in income.

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Actual results could differ from those estimates.

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Bond issue costs are amortized over the life of the related bonds based on a straight line method over the terms of the bonds or on a weighted average of outstanding debt during the year.

Inventory is stated at the lower of cost or market using the first in, first out method.

The reserve method is used to provide for possible losses in the collection of customer's accounts receivable.

For the purpose of the Statement of Cash Flows, the District considers all highly liquid investments (including restricted assets) with an original maturity of 3 months or less to be cash equivalents.

CASH AND TEMPORARY INVESTMENTS

Cash and temporary investments consist of the following accounts and amounts at June 30, 2002:

Operation and maintenance	\$ 6,615
Other checking	190,518
Revenue fund	81,540
Certificates of deposit	<u>85,215</u>
Total	\$ <u>363,888</u>

The revenue fund is a restricted account under the control of a trustee in accordance with provisions of the revenue bond resolutions; however, these funds are generally available for the operations of the District.

The certificates of deposit represent funds on deposit with various financial institutions.

RESTRICTED ASSETS

The debt service funds represent funds on deposit with the West Virginia Municipal Bond Commission as trustee under the various bond resolutions. These funds are to be used to pay bond interest and principal.

The debt service reserve funds represent funds on deposit with the West Virginia Municipal Bond Commission. The District is required to maintain these accounts over the life of the outstanding bond issues.

The construction fund represents funds on deposit with a financial institution. These funds are to be used to pay the costs of the District's construction projects.

The renewal and replacement fund represents funds on deposit with several financial institutions for the purpose of meeting unforeseen emergencies or renewal and replacement work.

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

**RESTRICTED ASSETS (Continued)**

Customer deposits represent funds on deposit with several financial institutions for the purpose of securing payment for services in the event customer accounts become delinquent.

**COLLATERALIZATION OF DEPOSITS**

District deposits held by financial institutions are insured up to \$100,000 at each financial institution by the Federal Deposit Insurance Corporation (FDIC). The District's deposits held in three financial institutions exceed the \$100,000 FDIC limit. The District's deposits are categorized to give an indication of the level of risk assumed by the District at fiscal year end.

Category 1- Insured or collateralized with securities held by the District or by its agent in the District's name.

Category 2- Collateralized with securities held by the pledging financial institution or agent in the District's name.

Category 3- Uncollateralized (which includes securities held by the pledging financial institution or agent not in the District's name).

Deposits, not including funds held by the West Virginia Municipal Bond Commission, categorized by the level of risk are:

	<u>Bank Balance</u>	<u>Category</u>			<u>Carrying Amount</u>
		<u>1</u>	<u>2</u>	<u>3</u>	
Deposits	\$2,148,433	\$624,859	\$ -	\$1,523,574	\$1,834,748

**DAILY CASH INVESTMENT REPURCHASE AGREEMENT**

The District has a repurchase agreement with a financial institution for the investment of excess funds in the District's operating checking account. Under the repurchase agreement, all collected balances in the account at the end of each day are automatically withdrawn and used to purchase an investment under the repurchase agreement. Investments are backed by securities that are direct obligations of, or are fully guaranteed as to principal and interest by the United States of America or any agency thereof. The market value of the investments approximates cost at June 30, 2002.

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

UTILITY PLANT

Major classifications of utility plant of the District and their respective useful lives at June 30, 2002, are summarized below:

		<u>Useful Lives</u>
Land	\$ 829,611	
Utility plant and equipment	23,366,202	10-50 years
Water lines, meters and hydrants	17,372,908	10-50 years
Office equipment and furniture	454,182	5-20 years
Vehicles	2,721,424	5-10 years
Shop and garage equipment	<u>1,237,780</u>	5-25 years
	45,982,107	
Less accumulated depreciation	<u>14,316,141</u>	
Net utility plant in service	<u>\$ 31,665,966</u>	

REVENUE BONDS PAYABLE

The District is obligated under certain bond resolutions with respect to the following revenue bonds outstanding as of June 30, 2002:

Series A 1993 water revenue refunding bonds, payable in annual installments, with varying principal and interest beginning March 1, 1994 at \$190,000 including 2.40% interest and concluding March 1, 2010 at \$55,000 including 5.50% interest;

\$ 1,540,000

Series B 1993 water revenue refunding bonds, payable in annual installments, with increasing principal and interest beginning October 1, 1993 at \$2,359 and concluding October 1, 2031 at \$40,229 including 7.75% interest;

499,722

Series C 1993 water revenue refunding bonds, payable in annual installments, beginning October 1, 1993 and concluding October 1, 2031 at \$452 with no interest;

13,561

Series D 1993 water revenue refunding bonds, principal payable in annual installments beginning October 1, 1995 and concluding April 1, 2033 with interest payable in semi-annual installments at 6.75%;

9,752,925

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

REVENUE BONDS PAYABLE (Continued)

Series 1994 water revenue refunding bonds, payable in annual installments, with increasing principal and interest beginning September 1, 1995 at \$45,000 including 3.90% interest and concluding September 1, 2019 at \$735,000 including 6.25% interest;	<b>\$ 1,900,000</b>
Series 1996 water revenue refunding bonds, payable in annual installments, with increasing principal and interest beginning October 1, 1997 at \$4,392 and concluding October 1, 2035 at \$43,966 including 6.25% interest;	<b>652,279</b>
Series 1997 water revenue refunding bonds, payable in quarterly installments of \$41,223 beginning December 1, 1997 and concluding December 1, 2017 with no interest;	<b>2,555,847</b>
Series 2001 water revenue refunding bonds, payable in annual installments with varying principal and interest beginning October 1, 2002 at \$15,502 and concluding October 1, 2039 at \$124,841 including 5.8% interest;	<b><u>2,010,000</u></b>
	<b>\$ <u>18,924,334</u></b>

Maturities of revenue bonds payable for each of the five years succeeding June 30, 2002 are as follows:

2003	\$	559,306
2004		577,205
2005		600,629
2006		629,618
2007		654,203
Thereafter		<u>15,903,373</u>
		<b>\$ <u>18,924,334</u></b>

The revenue bond issues are secured by a lien on the revenues derived from the system and a statutory mortgage lien on the system plant.

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

REVENUE BONDS PAYABLE (Continued)

The significant covenants contained in the bond issues are as follows:

Actual coverage ratio (1)	107.60%
Required coverage ratio	115%
Required renewal and replacement fund	\$123,594
Required debt service reserve (to be funded over 10 years)	\$1,683,939

(1) The District has filed a Rule 42 rate application with the West Virginia Public Service Commission and is in the process of obtaining approval of an increase to its water rates and charges.

LINE OF CREDIT PAYABLE

On April 8, 2002, the District obtained a \$200,000 unsecured line of credit with a local bank. The District pays interest only on a monthly basis and the principal is due on demand. The interest rate to be applied to the unpaid principal balance varies based on the Prime Rate as published in the *Wall Street Journal*. The initial rate of interest is 4.75%. The balance outstanding at June 30, 2002 was \$59,000.

BOND ANTICIPATION NOTE PAYABLE

In June 2001, the District obtained a \$385,000 Bond Anticipation note from a local bank at a 4.27% interest rate with principal and interest due in December 2001. As of June 30, 2002, the District had not made any payments on this obligation. In August 2002, the principal portion of this note was purchased by another local bank at which time the note's maturity was extended to March 2004.

CAPITAL LEASE PAYABLE

The District is the lessee of various equipment under capital leases. In September 1999, the District entered into a five year lease in the amount of \$27,990. Depreciation expense for the year ended June 30, 2002 was \$5,454. Additionally, in March 2002, the District leased equipment for \$39,590 under a two year lease agreement. Depreciation expense for the year ended June 30, 2002 was \$5,988. The assets and liabilities under capital leases are recorded at the present value of the minimum lease payments. The assets are depreciated over their estimated productive lives. Depreciation of assets under capital leases is included in depreciation expense for the year ended June 30, 2002.

Minimum future lease payments under the equipment capital leases as of June 30, 2002 for the remainder of the lease term and in the aggregate are:

2003	\$ 29,035
2004	21,621
2005	<u>1,699</u>
	52,355
Less: amount representing interest	<u>(4,792)</u>
Present value of net minimum lease payment	\$ <u>47,563</u>

Berkeley County Public Service Water District  
**NOTES TO FINANCIAL STATEMENTS (Continued)**

June 30, 2002

**CAPITAL LEASE PAYABLE (Continued)**

The former Hedgesville Public Service District entered into an agreement to lease a water distribution main from the City of Martinsburg. Under the agreement, the District pays the City of Martinsburg monthly lease payments beginning in 2001 over a thirty-year term. At the end of the lease, ownership of the leased property is transferred to the District.

Minimum future lease payments under capital leases as of June 30, 2002 for each of the next five years and in the aggregate are:

2003	\$	67,059
2004		67,100
2005		67,100
2006		67,100
2007		67,100
Thereafter		<u>1,614,560</u>
Total minimum lease payments		\$ 1,950,019
Less: amount representing interest		<u>(930,036)</u>
Present value of net minimum lease payments		\$ <u>1,019,983</u>

In addition to leasing the water distribution main, the District has committed to pay a minimum of approximately \$29,000 annually for purchased water from the City of Martinsburg, once the water distribution main is put in service.

As of June 30, 2002, the water distribution main was still under construction.

**CAPITAL COMMITMENTS MADE WITH OTHER UTILITY PROVIDERS**

On May 17, 2000, the former Berkeley County Public Service District entered into an agreement with the City of Martinsburg, West Virginia ("City"), for the sale and purchase of water. The District has committed to pay a minimum of approximately \$200,000 annually for purchased water from a City owned treatment plant. The District also agreed to pay a monthly fee to the City for allocated capacity, cost of funding required reserves, and renewal and replacements. This monthly fee will be based on an approximate \$850,000 capital base at an estimated 5.8% interest rate in effect over the term of this agreement (40 years).

**OPERATING LEASE**

The District entered into an operating lease for administrative space on October 1, 2001. Rental payments under the lease agreement are \$2,300 per month. The lease expires November 30, 2003. Rental expense charged to income for the year ended June 30, 2002 was \$15,225.

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

**ADVANCES FOR CONSTRUCTION - DEVELOPERS**

These advances represent the unreimbursed cost of line additions constructed by developers and titled to the District. The District is obligated to reimburse the developers based on the revenue derived from customers connected to the lines. The reimbursements are payable for up to a ten year period from the date of completion of the lines and are based on service connections made during a year. In no case is the reimbursement to the developers to exceed the total cost of the line additions. It is estimated that these advances will mature at approximately \$34,000 for the year ended June 30, 2003.

**RETIREMENT PLAN**

All full-time employees of the District are covered by the WV Public Employees Retirement System, a cost-sharing multi-employer PERS.

All full-time employees are eligible and must participate in the State PERS. The pension plan provides pension benefits, deferred allowances, and death and disability benefits. A member may retire after reaching the age of 60 and accumulating 5 years of credited service in force. Benefits generally vest in varying degrees once a member attains 5 or more years of credited service in force. Employees who retire at age 60 with 5 or more years of credited service in force are entitled to pension payments for the rest of their lives equal to 2% of their final, three-year average salary times the number of years for which they were employed as a participant in the State PERS.

Pension provisions include deferred allowances whereby an employee may terminate his or her employment with the District after accumulating 5 or more years of credited service in force, but before reaching the age of 60. If the employee does not withdraw his or her accumulated contributions, the employee is entitled to certain pension benefits in accordance with the West Virginia Public Employees Retirement Act.

Pension provisions include annuity options to provide benefits to a member's nominated beneficiary if so elected. In addition, disability retirement is provided for members who meet certain requirements as specified in the Act. The District's covered payroll amounted to \$1,290,699 for the year ended June 30, 2002.

Employees of the District are required to pay 4.5% of their gross earnings to the pension plan. The District makes annual contributions to the plan equal to 9.5% of its covered payroll. Total contributions made during the fiscal year ended June 30, 2002 amounted to \$180,698, of which \$58,082 was made by employees. Information regarding the plan is available from the state of West Virginia.

**CONSTRUCTION IN PROGRESS**

At June 30, 2002, construction in progress consisted of various water upgrade projects.

The first project relates to water system capital improvements and tank replacements. This project's expenditures totaled \$1,012,620 at June 30, 2002. The total project is estimated to cost \$4,440,000 upon completion. At June 30, 2002, the District had committed to construction and engineering contracts of approximately \$851,000 and \$582,000 respectively as part of this project.

The second project relates to water system capital improvements and construction of a new tank. This project's expenditures totaled \$61,360 at June 30, 2002. The total project is estimated to cost \$1,660,000 upon completion.

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

**SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION**

Cash and cash equivalents consist of the following at June 30, 2002:

Operation and maintenance	\$ 197,133
Revenue fund	81,540
Debt service funds	1,021,526
Debt service reserve funds	1,407,424
Construction fund	615,413
Renewal and replacement fund	395,687
Security deposit funds	<u>53,047</u>
<b>Total</b>	<b>\$ <u>3,771,770</u></b>

The change in cash and cash equivalents by unrestricted and restricted designations consists of the following at June 30, 2002:

	<u>Unrestricted</u>	<u>Restricted</u>	<u>Total</u>
June 30, 2001	\$ 688,685	\$ 2,402,120	\$ 3,090,805
June 30, 2002	<u>278,674</u>	<u>3,493,096</u>	<u>3,771,770</u>
(Decrease)/increase in cash and cash equivalents	\$ <u>(410,011)</u>	\$ <u>1,090,976</u>	\$ <u>680,965</u>

**MAINLINE EXTENSIONS**

Included in the accompanying income statement are capital contributions, which represent management's estimate of the value of mainline extensions contributed to the District by developers. Mainline extensions constructed by developers are titled to the District upon their completion. Their estimated costs and offsetting capital contributions are recorded in the District's books totaling \$3,061,359 for the year ended June 30, 2002. Total capital contributions in the income statement consist of the following:

Mainline extensions & hydrants	\$ 3,148,667
Service connection fees	110,250
Advance for construction – current year	<u>3,596</u>
<b>Total capital contributions</b>	<b>\$ <u>3,262,513</u></b>

Berkeley County Public Service Water District

NOTES TO FINANCIAL STATEMENTS (Continued)

June 30, 2002

**PRIOR PERIOD ADJUSTMENTS**

Retained earnings at June 30, 2002 has been adjusted to correct errors and make eliminating entries made in the years prior to July 1, 2001. Had the errors not been made, retained earnings as of June 30, 2001 would have been increased by \$131,763. The prior period adjustments were:

Prior period adjustment (1)	\$ 23,916
Prior period adjustment (2)	(18,774)
Prior period adjustment (3)	<u>126,621</u>
Total adjustment to retained earnings	\$ <u>131,763</u>

Prior period adjustment (1) corrected retained earnings for a deposit in transit that was not recorded in the prior year.

Prior period adjustment (2) removed fixed assets that should have been reported as disposals in previous years.

Prior period adjustment (3) eliminated duplicate assets, liabilities, revenues, expenditures, and effects on retained earnings due to the merger of the separate districts.

Contributed capital was adjusted as of June 30, 2001 to eliminate inter-district debt after the merger of the separate districts and to record developer liabilities attributable to prior years that were not previously recorded. Contributed capital was decreased by \$61,648.

**SUPPLEMENTAL INFORMATION**

Berkeley County Public Service Water District

**SCHEDULE OF OPERATING EXPENSES**

For the year ended June 30, 2002

Source of supply expenses	
Maintenance of sources of supply	\$ 20,534
Operation supervision and labor	51,577
Water purchased	267,547
Miscellaneous expenses	133,147
Rents	4,640
Total	<u>477,445</u>
Pumping system expenses	
Power purchased	170,347
Labor and expenses	154,744
Miscellaneous expenses	2,053
Maintenance of pumping system	1,021
Total	<u>328,165</u>
Treatment expenses	
Operation supervision and labor	144,814
Chemical treatment	93,108
Miscellaneous expenses	33,057
Maintenance of treatment system	17,151
Total	<u>288,130</u>
Transmission and distribution expenses	
Miscellaneous expenses	47,042
Maintenance of distribution mains	294,160
Rents - railroad right of way	7,126
Total	<u>348,328</u>
Customers' accounting and collection expenses	
Meter reading	126,056
Accounting and collection	214,031
Total	<u>340,087</u>
General and administrative expenses	
Salaries and wages	468,232
Office and general supplies	29,515
Outside services	122,952
Employee welfare	419,615
Regulatory commission expense	25,204
Insurance	143,334
Miscellaneous expenses	260,243
Maintenance of equipment	35,414
Payroll taxes	110,180
Total	<u>1,614,689</u>
Total operating expenses	\$ <u>3,396,844</u>

See independent accountants' report.



**INDEPENDENT AUDITORS' REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER FINANCIAL REPORTING BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

The Members of the Public Service Board  
Berkeley County Public Service Water District

We have audited the general purpose financial statements of the Berkeley County Public Service Water District ("District") as of and for the year ended June 30, 2002, and have issued our report thereon dated September 30, 2002. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

**Compliance**

As part of obtaining reasonable assurance about whether the District's general purpose financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance that are required to be reported under Government Auditing Standards which are described in the accompanying schedule of reportable findings. We also noted certain immaterial instances of noncompliance that we have reported to management of the District in a separate letter dated October 15, 2002.

**Internal Control Over Financial Reporting**

In planning and performing our audit, we considered the District's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the general purpose financial statements and not to provide assurance on the internal control over financial reporting. However, we noted a certain matter involving the internal control over financial reporting and its operation that we consider to be a reportable condition. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the District's ability to record, process, summarize and report financial data consistent with the assertions of management in the general purpose financial statements. The reportable condition is reported in the accompanying schedule of reportable findings.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the general purpose financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we do not believe the reportable condition described above is a material weakness. We also noted other matters involving the internal control over financial reporting that we have reported to management of the District in a separate letter dated October 15, 2002.

This report is intended solely for the information and use of the District and its various regulatory agencies. However, this report is a matter of public record and its distribution is not limited.

*Cox Nichols Hollida, CPAs  
and Consultants, LLP*

Martinsburg, West Virginia  
September 30, 2002

Berkeley County Public Service Water District

**SCHEDULE OF REPORTABLE FINDINGS**

For the year ended June 30, 2002

Compliance

During the testing of compliance with laws, regulations, and agreements, we noted the following:

The District did not maintain rates established at a sufficient level to enable a remaining balance of 115% of the maximum amount required to pay succeeding fiscal year debt service (principal and interest) on all bonds outstanding after payment of operating expenses as required by bond covenants. The coverage ratio is only 107.6%. The District has filed a Rule 42 report with the West Virginia Public Service Commission and is awaiting approval of a rate increase.

The District's deposits held by one financial institution are under collateralized by approximately \$275,000.

The District's operating budget was not approved and submitted in the time frame required by the bond document.

Internal Control Over Financial Reporting

We noted the following reportable condition in internal control over financial reporting:

Monthly bank reconciliations are being performed by various individuals. It appears that the reconciliations are not being reviewed by appropriate personnel after they are prepared. It was noted that 4 bank reconciliations did not agree to their respective general ledger balance.

Appendix C

Proposed Form of Bond Counsel Opinions

April 30, 2003

Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003 A (Bank Qualified)

Berkeley County Public Service District  
Martinsburg, West Virginia

Ambac Assurance Corporation  
New York, New York

Ross, Sinclaire & Associates, Inc.  
Frankfort, Kentucky

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by Berkeley County Public Service District (West Virginia) (the "Issuer") of its \$1,330,000 in aggregate principal amount Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) (the "Series 2003 A Bonds").

The Series 2003 A Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act") and a Bond Resolution duly adopted by the Issuer on April 14, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on April 14, 2003 (collectively, the "Resolution") and are subject to all the terms and conditions of the Resolution. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Resolution.

The Series 2003 A Bonds are issued in fully registered form, are dated April 1, 2003, upon original issuance, mature on March 1 in years and amounts and bear interest payable each March 1 and September 1, commencing September 1, 2003, as follows:

<u>Maturity</u>	<u>Amount</u>	<u>Interest Rate</u>
3/1/04	\$300,000	2.0000%
3/1/05	265,000	2.0000
3/1/06	275,000	2.0000
3/1/07	280,000	2.2000
3/1/08	110,000	2.5000
3/1/09	50,000	2.9000
3/1/10	50,000	3.2000

The Series 2003 A Bonds are not subject to redemption prior to maturity.

The Series 2003 A Bonds are issued for the purposes of (i) paying a portion of the costs necessary to current refund all of the Issuer's outstanding Water Refunding Revenue Bonds, Series 1993 A, dated March 1, 1993, issued in the original aggregate principal amount of \$3,350,000, of which \$1,330,000 is presently outstanding (the "Series 1993 A Bonds"); (ii) partially funding a reserve account for the Series 2003 A Bonds and the Series 2003 B Bonds (as hereinafter defined) issued concurrently herewith; (iii) paying a portion of the costs of issuance of the Series 2003 A Bonds and the Series 2003 B Bonds and other costs in connection with such refunding; and (iv) paying the costs of acquisition and construction of certain additions, betterments and improvements to the System.

The Series 2003 A Bonds have been sold to Ross, Sinclair & Associates (the "Purchaser"), pursuant to a Bond Purchase Agreement dated April 17, 2003, and accepted by the Issuer (the "Purchase Agreement").

The Series 1993 A Bonds will be defeased pursuant to a Prepayment Agreement dated the date hereof, by and between the West Virginia Municipal Bond Commission (the "Commission") and the Issuer (the "Prepayment Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Purchaser and other entities contained in the Resolution, the Tax and Non-Arbitrage Certificate and the Continuing Disclosure Agreement and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants of the Issuer, the Purchaser and other entities pertaining to tax matters set forth in the Resolution, the Tax and Non-Arbitrage Certificate and the Continuing Disclosure Agreement and with certain certificates delivered in connection with the issuance of the Series 2003 A Bonds, we are of the opinion, under existing law, that:

1. The Issuer is a duly created and validly existing public service district and public corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt the Resolution, enter into the Continuing Disclosure Agreement, the Prepayment Agreement and the Purchase Agreement, perform its obligations under the terms and provisions thereof and to issue and sell the Series 2003 A Bonds, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted the Resolution, has authorized, executed and delivered the Purchase Agreement, the Prepayment Agreement and the Continuing Disclosure Agreement and has issued and delivered the Series 2003 A Bonds to the Purchaser pursuant to the Purchase Agreement. The Resolution is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto, the Purchase Agreement, the Prepayment Agreement and the Continuing Disclosure Agreement constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms; and the Series 2003 A Bonds, subject to the terms thereof, constitute valid and legally enforceable limited obligations of the Issuer, payable and

enforceable in accordance with their terms and the terms of the Resolution, and are entitled to the benefits of the Resolution and the Act.

4. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2003 A Bonds (including original issue discount properly allocable to owners of the Series 2003 A Bonds) is excludable from gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. Ownership of tax-exempt obligations, including the Series 2003 A Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences. Prospective purchasers of the Series 2003 A Bonds should consult their own tax advisors as to such consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (the "Code") that must be satisfied subsequent to issuance of the Series 2003 A Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Series 2003 A Bonds set forth in the Resolution, and the Tax and Non-Arbitrage Certificate. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Series 2003 A Bonds to be includable in gross income retroactive to the date of issuance of the Series 2003 A Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Series 2003 A Bonds except as expressly set forth in paragraph 5.

5. Pursuant to Section 265(b)(3)(D)(ii) of the Code, the Series 2003 A Bonds shall be treated as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code and shall be deemed so designated as the Series 2003 A Bonds and the issue of which they are a part satisfy the requirements set forth in Section 265(b)(3)(D)(ii) of the Code. Therefore, the Series 2003 A Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

6. Under the Act, the Series 2003 A Bonds are exempt from taxation by the State of West Virginia and the other taxing bodies of the State, and the interest on the Series 2003 A Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

7. The Series 1993 A Bonds have been paid within the meaning and with the effect expressed in the 1993 Resolution and the Prepayment Agreement, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1993 A Bonds have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the certificate of the West Virginia Municipal Bond Commission relating to the sufficiency of the moneys on deposit in the Series 1993 A Bonds Sinking Fund to provide for the payment on June 15, 2003, of the principal of and interest on the Series 1993 A Bonds.

8. The Series 2003 A Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Series 2003 A Bonds, to register any securities under said Securities Acts.

9. The Series 2003 A Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Resolution and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with the Issuer's Water Revenue Bonds, Series 1993 B, dated March 8, 1993, Water Revenue Bonds, Series 1993 D, dated July 29, 1993, Water Revenue Bonds, Series 1996, dated August 6, 1996, Water Revenue Bonds, Series 1997, dated June 25, 1997, Water Revenue Bonds, Series 2001 A, dated October 25, 2001, and Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified) (the "Series 2003 B Bonds") issued concurrently herewith (collectively, the "First Lien Bonds"), and senior and prior to the Issuer's Water Revenue Bonds, Series 1993 C, dated March 8, 1993 (the "Second Lien Bonds"), all in accordance with the terms of the Series 2003 A Bonds and the Resolution.

It is to be understood that the rights of the holders of the Series 2003 A Bonds and the enforceability of liens, pledges, rights or remedies with respect to the Series 2003 A Bonds, the Resolution, the Continuing Disclosure Agreement and the Purchase Agreement are subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally, and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Bond Nos. AR-1 through AR-7 of said issue, and in our opinion, said Series 2003 A Bonds are in proper form and have been duly executed and authenticated.

Very truly yours,

STEPTOE & JOHNSON PLLC

April 30, 2003

Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003 B (Non-Bank Qualified)

Berkeley County Public Service District  
Martinsburg, West Virginia

Ambac Assurance Corporation  
New York, New York

Ross, Sinclaire & Associates, Inc.  
Frankfort, Kentucky

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance by Berkeley County Public Service District (West Virginia) (the "Issuer") of its \$2,030,000 in aggregate principal amount Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified) (the "Series 2003 B Bonds").

The Series 2003 B Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act") and a Bond Resolution duly adopted by the Issuer on April 14, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on April 14, 2003 (collectively, the "Resolution") and are subject to all the terms and conditions of the Resolution. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Resolution.

The Series 2003 B Bonds are issued in fully registered form, are dated April 1, 2003, upon original issuance, mature on September 1 in years and amounts and bear interest payable each March 1 and September 1, commencing September 1, 2003, as follows:

<u>Maturity</u>	<u>Amount</u>	<u>Interest Rate</u>
9/1/03	\$50,000	2.0000%
9/1/04	75,000	2.0000
9/1/05	75,000	2.0000
9/1/06	75,000	2.0000
9/1/07	50,000	2.3500
9/1/08	260,000	3.0000
9/1/09	60,000	3.0000
9/1/10	120,000	3.3000
9/1/11	125,000	3.5500
9/1/12	125,000	3.7000
9/1/13	130,000	3.8000
9/1/14	135,000	3.9500
9/1/15	140,000	4.0000
9/1/16	145,000	4.1000
9/1/17	150,000	4.2000

9/1/18	155,000	4.3000
9/1/19	160,000	4.4000

The Series 2003 B Bonds are subject to optional and mandatory sinking fund redemption prior to maturity on the dates, in the amounts and at the redemption prices set forth in the Resolution.

The Series 2003 B Bonds are issued for the purposes of (i) paying a portion of the costs necessary to advance refund all of the Issuer's outstanding Water Revenue Bonds, Series 1994, dated September 1, 1994, issued in the original aggregate principal amount of \$2,275,000, of which \$1,835,000 is presently outstanding (the "Series 1994 Bonds"); (ii) partially funding a reserve account for the Series 2003 B Bonds and the Series 2003 A Bonds (hereinafter defined) issued concurrently herewith; (iii) paying a portion of the costs of issuance of the Series 2003 B Bonds and the Series 2003 A Bonds and other costs in connection with such refunding; and (iv) paying the costs of acquisition and construction of certain additions, betterments and improvements to the System.

The Series 2003 B Bonds have been sold to Ross, Sinclair & Associates (the "Purchaser"), pursuant to a Bond Purchase Agreement dated April 17, 2003, and accepted by the Issuer (the "Purchase Agreement").

The Series 1994 Bonds will be defeased pursuant to an Escrow Agreement dated the date hereof, by and between the West Virginia Municipal Bond Commission (the "Commission") and the Issuer (the "Escrow Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Purchaser and other entities contained in the Resolution, the Tax and Non-Arbitrage Certificate and the Continuing Disclosure Agreement and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants of the Issuer, the Purchaser and other entities pertaining to tax matters set forth in the Resolution, the Tax and Non-Arbitrage Certificate and the Continuing Disclosure Agreement and with certain certificates delivered in connection with the issuance of the Series 2003 B Bonds, we are of the opinion, under existing law, that:

1. The Issuer is a duly created and validly existing public service district and public corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt the Resolution, enter into the Continuing Disclosure Agreement, the Escrow Agreement and the Purchase Agreement, perform its obligations under the terms and provisions thereof and to issue and sell the Series 2003 B Bonds, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted the Resolution, has authorized, executed and delivered the Purchase Agreement, the Escrow Agreement and the Continuing Disclosure Agreement and has issued and delivered the Series 2003 B Bonds to the Purchaser pursuant to the Purchase Agreement. The Resolution is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto, the Purchase Agreement, the Escrow Agreement and the Continuing Disclosure Agreement constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms; and the Series 2003 B Bonds, subject to the terms thereof, constitute valid and legally enforceable limited obligations of the Issuer, payable and enforceable in accordance with their terms and the terms of the Resolution, and are entitled to the benefits of the Resolution and the Act.

4. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Series 2003 B Bonds (including original issue discount properly allocable to owners of the Series 2003 B Bonds) is excludable from gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that for the purpose of computing the alternative minimum tax on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. Ownership of tax-exempt obligations, including the Series 2003 B Bonds, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. We offer no opinion as to such collateral tax consequences. Prospective purchasers of the Series 2003 B Bonds should consult their own tax advisors as to such consequences. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (the "Code") that must be satisfied subsequent to issuance of the Series 2003 B Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Series 2003 B Bonds set forth in the Resolution, and the Tax and Non-Arbitrage Certificate. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Series 2003 B Bonds to be includable in gross income retroactive to the date of issuance of the Series 2003 B Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Series 2003 B Bonds.

5. Under the Act, the Series 2003 B Bonds are exempt from taxation by the State of West Virginia and the other taxing bodies of the State, and the interest on the Series 2003 B Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

6. The Series 1994 Bonds have been paid within the meaning and with the effect expressed in the 1994 Resolution and the Escrow Agreement, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Series 1994 Bonds have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the certificate of the West Virginia Municipal Bond Commission relating to the sufficiency of the moneys on deposit in the Series 1994 Bonds Sinking Fund to provide for the payment on September 1, 2004, of the principal of and interest on the Series 1994 Bonds.

7. The Series 2003 B Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform

Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Series 2003 B Bonds, to register any securities under said Securities Acts.

8. The Series 2003 B Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Resolution and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with the Issuer's Water Revenue Bonds, Series 1993 B, dated March 8, 1993, Water Revenue Bonds, Series 1993 D, dated July 29, 1993, Water Revenue Bonds, Series 1996, dated August 6, 1996, Water Revenue Bonds, Series 1997, dated June 25, 1997, Water Revenue Bonds, Series 2001 A, dated October 25, 2001, and Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) (the "Series 2003 A Bonds") issued concurrently herewith (collectively, the "First Lien Bonds"), and senior and prior to the Issuer's Water Revenue Bonds, Series 1993 C, dated March 8, 1993 (the "Second Lien Bonds"), all in accordance with the terms of the Series 2003 B Bonds and the Resolution.

It is to be understood that the rights of the holders of the Series 2003 B Bonds and the enforceability of liens, pledges, rights or remedies with respect to the Series 2003 B Bonds, the Resolution, the Continuing Disclosure Agreement and the Purchase Agreement are subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally, and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Bond Nos. BR-1 through BR-17 of said issue, and in our opinion, said Series 2003 B Bonds are in proper form and have been duly executed and authenticated.

Very truly yours,

STEPTOE & JOHNSON PLLC

## Appendix D

### Summary of Certain Provisions of the Resolution

The following is a summary of certain provisions of the Resolution. The summary does not purport to be a comprehensive statement of the terms and provisions thereof, for which reference is made to the complete text of the Resolution, copies of which may be obtained from the Issuer or, during the period of the offering of the Bonds, from the Underwriter.

#### **Certain Definitions**

"Act" means Chapter 16, Article 13A of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Series 2003 A Bonds and Series 2003 B Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer and Redemption Digest.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any Acting Chairman duly selected by the Governing Body.

"Bond Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

"Bondholder," "Holder of the Bonds," "Owner of the Bonds" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, or such other period as shall be determined by the Issuer, except that the first Bond Year shall begin on the Closing Date.

"Bonds" means, collectively, the Series 2003 A Bonds, the Series 2003 B Bonds, the First Lien Bonds and the Second Lien Bonds, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Chairman" means the Chairman of the Governing Body of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2003 Bonds for the proceeds representing the respective original purchase prices thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Construction Fund" means the Construction Fund created by Section 4.01 thereof.

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of refunding the Series 1993 A Bonds (which amount shall reflect the Independent Certified Public Accountant's determination of the Redemption Price of the Series 1993 A Bonds), the costs of refunding the Series 1994 Bonds (which amount shall reflect the Independent Certified Public Accountant's determination of the Redemption Price of the Series 1994 Bonds), interest accruing or to accrue thereon, redemption premiums, premiums for bond insurance and reserve account insurance, letter of credit fees, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Series Bonds and the refunding of the Series 1993 A Bonds and the Series 1994 Bonds.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"DTC" means the Depository Trust Company, New York, New York, or its successor thereof.

"DTC-eligible" means, with respect to the Series 2003 Bonds, meeting the qualifications prescribed by the Depository Trust Company, New York, New York.

"Event of Default" means any occurrence or event specified in Section 7.01 of the Resolution.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Financial Guaranty Insurance Policy" means the financial guaranty insurance policy, if any, issued by a Bond Insurer simultaneously with the delivery of the Series 2003 Bonds, insuring the payment of the principal of and interest on all or any of the Series 2003 Bonds in accordance with the terms thereof.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" or "Board" means the public service board of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined), or any Tap Fees, as hereinafter defined.

"Independent Certified Public Accountant" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means Berkeley County Public Service District, a public service district and public corporation and political subdivision of the State of West Virginia, in Berkeley County of said State, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Net Proceeds" means the face amount of the Series 2003 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2003 Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2003 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any investment property which is acquired with the gross proceeds of the Series 2003 Bonds and is not acquired in order to carry out the governmental purpose of the Series 2003 Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any

decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Original Purchaser" means Ross, Sinclaire & Associates, Frankfort, Kentucky, as the purchaser of the Series 2003 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 2003 Bonds with interest rates and other terms allowable under the Act, such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 2003 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 2003 Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adopted by the Issuer at the time of approval of such sale of said Series 2003 Bonds.

"Outstanding," when used with reference to the Series 2003 Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond canceled by the registrar for such Bond at or prior to said date; (b) any Bond for the payment of which monies, equal to its principal amount, with interest to the date of maturity, shall be held in trust under the Resolution and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01 of the Resolution; and (d) with respect to determining the number or percentage of Bondholders or Bonds for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as a Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar or other entity designated as such for the Series 2003 Bonds in the Supplemental Resolution, and any successor thereto appointed in accordance with Section 8.12 thereof.

"Prior Resolutions" means the bond resolution, as supplemented, of the Issuer or the bond resolutions of Hedgesville and Opequon assumed by merger, authorizing the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Purchase Price," for the purpose of computation of the Yield of the Series 2003 Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2003 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Series 2003 Bonds of each maturity is sold or, if the Series 2003 Bonds are privately placed, the price paid by the first buyer of the Series 2003 Bonds or the acquisition cost of the first buyer.

"Qualified Investments" means and includes the investments set forth in the Ordinance or the Supplemental Resolution and designated as such.

"Record Date" means the day of the month which shall be so stated in the Series 2003 Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of any Bonds of the Issuer called for redemption.

"Redemption Price" means the price at which any Bonds of the Issuer may be called for redemption and includes the principal of and interest on such Bonds to be redeemed, plus the interest and premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the Registrar for the Series 2003 Bonds, and any successor thereto appointed in accordance with Section 8.08 thereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Resolutions and continued hereby.

"Reserve Accounts" means the respective Reserve Accounts established for the Series 2003 Bonds and the Prior Bonds.

"Resolution" means the Resolution and all orders and resolutions supplemental hereto or amendatory thereof.

"1993 Resolution" means, collectively, the resolution and the supplemental resolution of the Issuer duly adopted March 4, 1993, authorizing the Series 1993 A Bonds.

"1994 Resolution" means, collectively, the resolution and the supplemental resolution of the Issuer duly adopted October 13, 1994, authorizing the Series 1994 Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Resolutions and continued hereby.

"Secretary" means the Secretary of the Governing Body of the Issuer.

"Series 1993 A Bonds" means the Water Refunding Revenue Bonds, Series 1993 A, as described in the Resolution.

"Series 1993 B Bonds" means the Water Revenue Bonds, Series 1993 B (formerly Hedgesville Public Service District Water Revenue Bonds, Series 1993 A), as described in the Resolution.

"Series 1993 C Bonds" means the Water Revenue Bonds, Series 1993 C (formerly Hedgesville Public Service District Water Revenue Bonds, Series 1993 B), as described in the Resolution.

"Series 1993 D Bonds" means the Water Revenue Bonds, Series 1993 D (formerly Opequon Public Service District Water Revenue Bonds, Series 1993), as described in the Resolution.

"Series 1994 Bonds" means the Water Revenue Bonds, Series 1994, as described in the Resolution.

"Series 1996 Bonds" means the Water Revenue Bonds, Series 1996 (formerly Hedgesville Public Service District Water Revenue Bonds, Series 1996), as described in the Resolution.

"Series 1997 Bonds" means the Water Revenue Bonds, Series 1997 (formerly Opequon Public Service District Water Revenue Bonds, Series 1997), as described in the Resolution.

"Series 2001 A Bonds" means the Water Revenue Bonds, Series 2001 A (West Virginia Water Development Authority), as described in the Resolution.

"Series 2003 Bonds" means, collectively, the Series 2003 A Bonds and the Series 2003 B Bonds.

"Series 2003 A Bonds" means the Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified), of the Issuer, originally authorized to be issued pursuant to the Resolution.

"Series 2003 A Bonds Redemption Account" means the Series 2003 A Bonds Redemption Account created by Section 4.02 thereof.

"Series 2003 A and Series 2003 B Bonds Reserve Account" means the Series 2003 A and Series 2003 B Bonds Reserve Account created by Section 4.02 thereof.

"Series 2003 A and Series 2003 B Bonds Reserve Requirement" means, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2003 A Bonds and the Series 2003 B Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2003 A Bonds and the Series 2003 B Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2003 A Bonds and the Series 2003 B Bonds.

"Series 2003 A Bonds Sinking Fund" means the Series 2003 A Bonds Sinking Fund created by Section 4.02 thereof.

"Series 2003 B Bonds" means the Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified), of the Issuer, originally authorized to be issued pursuant to the Resolution.

"Series 2003 B Bonds Redemption Account" means the Series 2003 B Bonds Redemption Account created by Section 4.02 thereof.

"Series 2003 B Bonds Sinking Fund" means the Series 2003 B Bonds Sinking Fund created by Section 4.02 thereof.

"Series 2001 Notes" means the Water Refunding Bond Anticipation Notes, Series 2001 (formerly Hedgesville Public Service District Water Refunding Bond Anticipation Notes, Series 2001), as described above.

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Series 2003 A Bonds, the Series 2003 B Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution amendatory thereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the Issuer following adoption of the Resolution, setting forth the final amounts, maturities, interest rates and other terms of the Series 2003 A Bonds and the Series 2003 B Bonds and authorizing the sale of the Series 2003 A Bonds and the Series 2003 B Bonds to the Original Purchaser and setting forth provisions specific to the Bond Insurer, if any; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Resolution to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means the complete public waterworks system of the Issuer, as presently existing in its entirety or any integral part thereof, and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system, and shall include any additions, improvements and extensions thereto hereafter constructed or acquired for the System from any sources whatsoever.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 thereof.

### **Disposition of Proceeds of Bonds**

A. Upon the issuance and delivery of the Series 2003 A Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on the Series 2003 A Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2003 A Bonds Sinking Fund and applied to payment of interest on the Series 2003 A Bonds at the first interest payment date.

2. An amount of the proceeds of the Series 2003 A Bonds which, together with other monies or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series 1993 A Bonds (which amount shall be set forth in the Supplemental Resolution) shall be deposited in the Series 1993 A Bonds Sinking Fund.

3. An amount of the proceeds of the Series 2003 A Bonds equal to a portion of the Series 2003 A and Series 2003 B Bonds Reserve Requirement shall be remitted to the

Bond Commission for deposit in the Series 2003 A and Series 2003 B Bonds Reserve Account; provided that, to the extent the Series 2003 A and Series 2003 B Bonds Reserve Requirement is satisfied in whole or in part from proceeds of any fund or account established for the Series 1993 A Bonds pursuant to the 1993 Resolution proceeds of the Series 2003 A Bonds shall be deposited in the Series 2003 A and Series 2003 B Bonds Reserve Account only to the extent needed to satisfy a portion of the Series 2003 A Bonds and Series 2003 B Reserve Requirement.

4. An amount of the proceeds of the Series 2003 A Bonds which shall be sufficient to pay a portion of the costs of issuance of the Series 2003 Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 2003 Bonds and miscellaneous costs of refunding the Series 1993 A Bonds and the Series 1994 Bonds. All such costs of issuance shall be paid within 60 days of the Closing Date. Monies not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with the Resolution, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer, pro rata, to the Series 2003 A Bonds Redemption Account and the Series 2003 B Bonds Redemption Account. All such proceeds transferred to the Series 2003 A Bonds Redemption Account shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2003 A Bonds.

5. The balance of any proceeds of the Series 2003 A Bonds and any monies in any fund or account established for the Series 1993 A Bonds pursuant to the 1993 Resolution, not used for any of the purposes set forth above, shall be deposited in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay the costs of acquisition and construction of certain improvements and extensions to the System (the "Project"). All such costs of the Project shall be paid within 6 months of the Closing Date. Monies not to be applied immediately to pay such costs of the Project may be invested in accordance with the Resolution, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2003 A Bonds.

B. Upon the issuance and delivery of the Series 2003 B Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

1. All interest accrued on the Series 2003 B Bonds from the date thereof to the date of delivery thereof shall be deposited in the Series 2003 B Bonds Sinking Fund and applied to payment of interest on the Series 2003 B Bonds at the first interest payment date.

2. An amount of the proceeds of the Series 2003 B Bonds which, together with other monies or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series 1994 Bonds (which amount shall be set forth in the Supplemental Resolution) shall be deposited in the Series 1994 Bonds Sinking Fund.

3. An amount of the proceeds of the Series 2003 B Bonds equal to the portion of Series 2003 A and Series 2003 B Bonds Reserve Requirement not funded with the proceeds of the Series 2003 A Bonds shall be remitted to the Bond Commission for deposit in the Series 2003 A and Series 2003 B Bonds Reserve Account; provided that, to the extent the Series 2003 B Bonds Reserve Requirement is satisfied in whole or in part from proceeds of any fund or account established for the Series 1994 Bonds pursuant to the 1994 Resolution proceeds of the Series 2003 B Bonds shall be deposited in the Series 2003 A and Series 2003 B Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 2003 A and Series 2003 B Bonds Reserve Requirement.

4. An amount of the proceeds of the Series 2003 B Bonds which shall be sufficient to pay the portion of all costs of issuance not paid with the proceeds of the Series 2003 A Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 2003 Bonds and miscellaneous costs of refunding the Series 1993 A Bonds and the Series 1994 Bonds at the written direction of the Issuer. All such costs of issuance shall be paid within 60 days of the Closing Date. Monies not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with the Resolution, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the Issuer, pro rata, to the Series 2003 A Bonds Redemption Account and the Series 2003 B Bonds Redemption Account. All such proceeds transferred to the Series 2003 B Bonds Redemption Account shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2003 B Bonds.

5. The balance of any proceeds of the Series 2003 B Bonds and any monies in any fund or account established for the Series 1994 Bonds pursuant to the 1994 Resolution, not used for any of the purposes set forth above, shall be deposited in the Construction Fund and shall be drawn out, used and applied by the Issuer solely to pay the costs of acquisition and construction of certain improvements and extensions to the System (the "Project"). All such costs of the Project shall be paid within 6 months of the Closing Date. Monies not to be applied immediately to pay such costs of the Project may be invested in accordance with the Resolution, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such monies until so applied in favor of the Holders of the Series 2003 B Bonds.

### **Investments**

The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any monies held as a part of the funds and accounts created by the Resolution in Qualified Investments to the fullest extent possible under applicable laws, the Resolution, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in the Resolution.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make

the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by the Resolution through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Series 2003 A and Series 2003 B Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to semiannually transfer from the Series 2003 A and Series 2003 B Bonds Reserve Account, pro rata, to the Series 2003 A Bonds Sinking Fund and Series 2003 B Bonds Sinking Fund, any earnings on the monies deposited therein and any other funds in excess of the requirement therefor; provided, however, that there shall at all times remain on deposit in the Series 2003 A and Series 2003 B Bonds Reserve Account an amount at least equal to the Series 2003 A and Series 2003 B Bonds Reserve Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Series 2003 A and Series 2003 B Bonds Reserve Account, whereupon such account shall be valued immediately after such withdrawal. If amounts on deposit in the Series 2003 A and Series 2003 B Bonds Reserve Account shall, at any time, be less than the Series 2003 A and Series 2003 B Bonds Reserve Requirement, the Bond Insurer, if any, shall be notified immediately of such deficiency, such deficiency shall be made up from the first available Net Revenues in the order set forth in Section 4.03 thereof.

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 2003 A Bonds and the Series 2003 B Bonds, as applicable, and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all monies deposited in the Series 2003 A Bonds Sinking Fund and the Series 2003 B Bonds Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended.

## **General Covenants**

**Enforcement of Collections.** The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by State law, as more fully provided in the Resolution. The Issuer will, to the full extent permitted by State law and the rules and regulations promulgated by the Public Service Commission of West

Virginia, shut off and discontinue supplying water from the System to customers who fail to pay all rates or charges for said water service.

Rate Covenant. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2003 A Bonds, the Series 2003 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or subordinate to the Series 2003 A Bonds and the Series 2003 B Bonds, including the First Lien Bonds and the Second Lien Bonds.

The Issuer shall require that each annual audit contain a statement of the auditor that the Issuer either is or is not in compliance with this rate covenant. In the event that any audit contains a statement that the Issuer is not in compliance with the rate covenant contained in the Resolution, the Issuer covenants that it shall, within sixty (60) days of receiving the audit report, file a request with the Public Service Commission of West Virginia for a rate increase sufficient to comply with the above-mentioned rate requirement.

Operation and Maintenance. The Issuer will operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

Sale of the System. The System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease the Resolution, and in accordance with the conditions established by the Resolution.

No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System. The rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee thereof using the facilities or services of the System. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Series 2003 Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act.

The Issuer shall file with the Original Purchaser and any Bond Insurer, and shall mail to any Bondholder requesting the same, an annual report within 30 days following the date of receipt of the final audit containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The Issuer shall also file with the Original Purchaser and any Bond Insurer, and mail to any Bondholder requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, and Net Revenues derived from the System.

(B) A statement of account balances in all funds and accounts provided for herein and status of said funds.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by an Independent Certified Public Accountant in compliance with OMB Circular 128 or any successor thereto and the Single Audit Act, shall mail upon request, and make available generally, the report of said Independent Certified Public Accountant, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to the Resolution and shall file said report with the Original Purchaser.

Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of such a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser, the Bond Insurer, if any, and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Net Revenues, with the Series 2003 Bonds; provided that additional

bonds on parity with the Bonds may be issued as described herein under the heading "SECURITY FOR THE SERIES 2003 BONDS - - Additional Parity Bonds."

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2003 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2003 Bonds and the interest thereon, if any, in the Resolution, or upon the System or any part thereof.

Insurance. The Issuer will, so long as the Series 2003 Bonds remain Outstanding, carry, with a reputable insurance carrier or carriers, fire, lightning, vandalism, malicious mischief, extended coverage, public liability and workers' compensation insurance, and require or maintain performance, completion and fidelity bonds, as provided in the Resolution.

Connections. To the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Statutory Mortgage Lien. For the further protection of the Holders of the Series 2003 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2003 Bonds, pro rata, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the First Lien Bonds, and senior and prior to the lien in favor of the Holders of the Second Lien Bonds.

Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2003 Bonds in such manner and to such extent as may be necessary, so that neither the Series 2003 Bonds will constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2003 Bonds) so that the interest on the Series 2003 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Defeasance; Discharge of Pledge of Resolution. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 2003 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Resolution, then the Resolution and the pledges of the Net Revenues and other monies and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Series 2003 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 2003 Bonds from gross income for federal income tax purposes.

The Bonds for the payment of which either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on the Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2003 Bonds shall, prior to the

maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on the Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of the Bonds prior to the maturity thereof, on and prior to said Redemption Date. Neither securities nor monies deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on the Bonds on and prior to such maturity or Redemption Dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge.

Amendment of Resolution. Prior to issuance of the Series 2003 Bonds, the Resolution may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of the Resolution, shall be controlling. Following issuance of the Series 2003 Bonds, the Resolution and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person, so long as such amendment or modification is not materially adverse to any Bondholder, as determined by an opinion of Bond Counsel. In the event any of the Series 2003 Bonds are insured, no such amendment or modification which adversely affects the security for such Series 2003 Bonds or the rights of any Bond Insurer for such Series 2003 Bonds may be effected without the written consent of such Bond Insurer. No materially adverse amendment or modification to the Resolution, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Series 2003 Bonds then Outstanding and affected thereby and such Bond Insurer, which must be filed with the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Series 2003 Bond without the express written consent of the Holder of each Series 2003 Bond so affected, nor reduce the percentage of Series 2003 Bonds required for consent to any such modification or amendment.

## **Default and Remedies**

Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2003 Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Series 2003 Bonds;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in the Resolution or any Supplemental Resolution or in the Series 2003 Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Bondholder or any Bond Insurer;

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(D) If default occurs with respect to the Prior Bonds or the Prior Resolutions.

The Issuer must cure any covenant default within 30 days after notice of the default, and failure to pay principal of or interest on the Bonds shall be an immediate event of default.

No waivers shall be granted by any party to the Bond documents without the prior written consent of the Bond Insurer, if any.

Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder or any Bond Insurer may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular: (i) bring suit for any unpaid principal or interest then due; (ii) by mandamus or other appropriate proceeding enforce all rights of the Bondholders, including the right to require the Issuer to perform its duties under the Act and the Resolution; (iii) bring suit upon the Series 2003 Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Bondholders; and (v) by action or bill in equity enjoin any acts in violation of the Resolution or the rights of the Bondholders.

No remedy by the terms of the Resolution conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute. All rights and remedies of the Holders of the Series 2003 Bonds shall be on a parity with one another and also on parity with those of the Holders of the First Lien Bonds, and senior and prior to those of the Holders of the Second Lien Bonds.

Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder or any Bond Insurer shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating

Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of the Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Series 2003 Bonds issued pursuant to the Resolution and interest thereon and under any covenants of the Resolution for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Revenues of the System shall have been paid and made good, and all defaults under the provisions of the Resolution shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Bondholder shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Holders of the Series 2003 Bonds issued pursuant to the Resolution. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any default under the provisions of the Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Notwithstanding any other provision of the Resolution, in determining whether the rights of Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of the Resolution, any trustee or Bondholder's committee shall consider the effect on the Bondholders as if no Financial Guaranty Insurance Policy were then in effect.

Appendix E

Specimen Financial Guaranty Insurance Policy

# Ambac

## Financial Guaranty Insurance Policy

Ambac Assurance Corporation  
One State Street Plaza, 15th Floor  
New York, New York 10004  
Telephone: (212) 668-0340

Obligor:

Policy Number:

Obligations:

Premium:

Ambac Assurance Corporation (Ambac), a Wisconsin stock insurance corporation, in consideration of the payment of the premium and subject to the terms of this Policy, hereby agrees to pay to The Bank of New York, as trustee, or its successor (the "Insurance Trustee"), for the benefit of the Holders, that portion of the principal of and interest on the above-described obligations (the "Obligations") which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Obligor.

Ambac will make such payments to the Insurance Trustee within one (1) business day following written notification to Ambac of Nonpayment. Upon a Holder's presentation and surrender to the Insurance Trustee of such unpaid Obligations or related coupons, uncanceled and in bearer form and free of any adverse claim, the Insurance Trustee will disburse to the Holder the amount of principal and interest which is then Due for Payment but is unpaid. Upon such disbursement, Ambac shall become the owner of the surrendered Obligations and/or coupons and shall be fully subrogated to all of the Holder's rights to payment thereon.

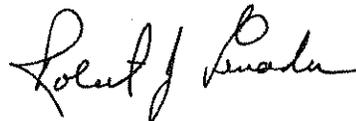
In cases where the Obligations are issued in registered form, the Insurance Trustee shall disburse principal to a Holder only upon presentation and surrender to the Insurance Trustee of the unpaid Obligation, uncanceled and free of any adverse claim, together with an instrument of assignment, in form satisfactory to Ambac and the Insurance Trustee, duly executed by the Holder or such Holder's duly authorized representative, so as to permit ownership of such Obligation to be registered in the name of Ambac or its nominee. The Insurance Trustee shall disburse interest to a Holder of a registered Obligation only upon presentation to the Insurance Trustee of proof that the claimant is the person entitled to the payment of interest on the Obligation and delivery to the Insurance Trustee of an instrument of assignment, in form satisfactory to Ambac and the Insurance Trustee, duly executed by the Holder or such Holder's duly authorized representative, transferring to Ambac all rights under such Obligation to receive the interest in respect of which the insurance disbursement was made. Ambac shall be subrogated to all of the Holders' rights to payment on registered Obligations to the extent of any insurance disbursements so made.

In the event that a trustee or paying agent for the Obligations has notice that any payment of principal of or interest on an Obligation which has become Due for Payment and which is made to a Holder by or on behalf of the Obligor has been deemed a preferential transfer and theretofore recovered from the Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court of competent jurisdiction, such Holder will be entitled to payment from Ambac to the extent of such recovery if sufficient funds are not otherwise available.

As used herein, the term "Holder" means any person other than (i) the Obligor or (ii) any person whose obligations constitute the underlying security or source of payment for the Obligations who, at the time of Nonpayment, is the owner of an Obligation or of a coupon relating to an Obligation. As used herein, "Due for Payment", when referring to the principal of Obligations, is when the scheduled maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments), acceleration or other advancement of maturity; and, when referring to interest on the Obligations, is when the scheduled date for payment of interest has been reached. As used herein, "Nonpayment" means the failure of the Obligor to have provided sufficient funds to the trustee or paying agent for payment in full of all principal of and interest on the Obligations which are Due for Payment.

This Policy is noncancelable. The premium on this Policy is not refundable for any reason, including payment of the Obligations prior to maturity. This Policy does not insure against loss of any prepayment or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Ambac, nor against any risk other than Nonpayment.

In witness whereof, Ambac has caused this Policy to be affixed with a facsimile of its corporate seal and to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding upon Ambac by virtue of the countersignature of its duly authorized representative.



President



Secretary

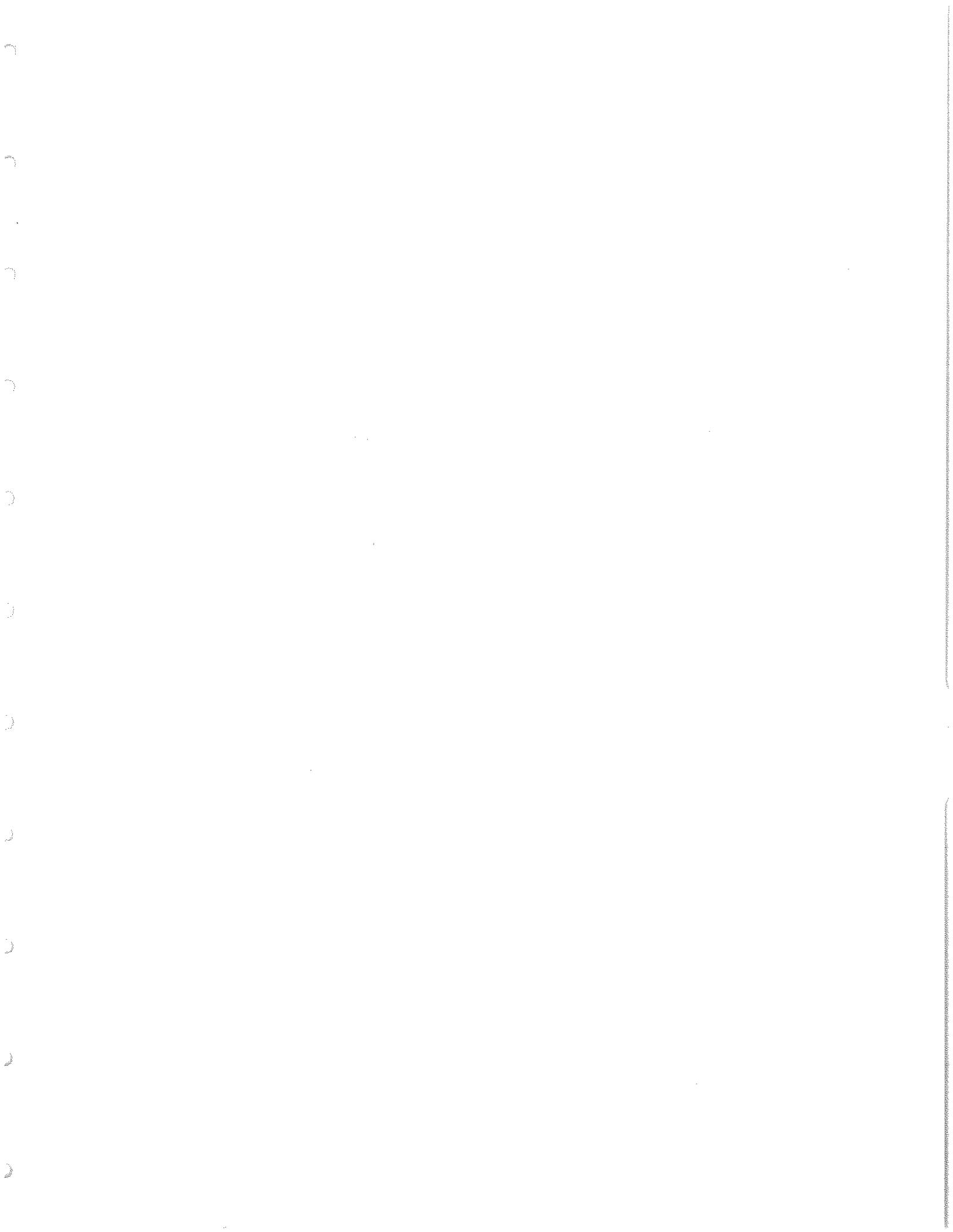
Effective Date:

Authorized Representative

THE BANK OF NEW YORK acknowledges that it has agreed to perform the duties of Insurance Trustee under this Policy.



Authorized Officer of Insurance Trustee



BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)

WATER REFUNDING REVENUE BONDS,  
SERIES 2003A (BANK QUALIFIED) AND  
SERIES 2003 B (NON-BANK QUALIFIED)

BOND PURCHASE AGREEMENT

April 17, 2003

Berkeley County Public Service District  
83 Monroe Street  
Martinsburg, West Virginia 25401

Ladies and Gentlemen:

Ross, Sinclaire & Associates (the "Underwriter") offers to enter into this Bond Purchase Agreement (the "Purchase Agreement") with the Berkeley County Public Service District (the "District"). This offer is made subject to acceptance and execution of this Purchase Agreement by the District prior to 11:59 p.m., local prevailing time on the date hereof, or until withdrawn by the Underwriter upon written notice to the District as permitted herein, whichever shall occur earlier. Upon such acceptance and approval, as evidenced by the signature of the Executive Director of the District in the space provided below, this Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the District and the Underwriter.

All capitalized terms used in this Purchase Agreement and not otherwise defined herein shall have the meanings set forth in the hereinafter described Resolution.

1. The Berkeley County Public Service District (West Virginia) \$1,330,000 Water Refunding Revenue Bonds, Series 2003A (Bank Qualified) ("Series 2003A Bonds") and \$2,030,000 Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified) (the "Series 2003 B Bonds") are being issued to provide funds, together with other funds available therefor, (i) to currently refund the District's Water Refunding Revenue Bonds, Series 1993 A, originally issued in the aggregate principal amount of \$3,350,000 and presently outstanding in the aggregate principal amount of \$1,330,000 (the "Series 1993 A Bonds"); (ii) to advance refund the District's Water Revenue Bonds, Series 1994, originally issued in the aggregate principal amount of \$2,275,000 and presently outstanding in the aggregate principal amount of \$1,835,000 (the "Series 1994 Bonds"); (iii)

to fund the Series 2003 A and Series 2003 B Bonds Reserve Account ; and (iv) pay all costs of issuance and related costs. The Series 2003 A Bonds and the Series 2003 B Bonds are collectively referred to as the "Series 2003 Bonds."

The Series 2003 Bonds shall be as described in, and shall be issued and secured under and pursuant to the provisions of the Bond Resolution adopted by the Board of the District on April 14, 2003, as supplemented and amended by the Supplemental Resolution adopted by the Board on April 14, 2003 (collectively, the "Resolution"). The Resolution shall be substantially in the form previously submitted to the Underwriter with such changes and amendments as the District's and Underwriter's counsel shall approve.

Upon the terms and conditions and upon the basis of the representations and warranties set forth in this Purchase Agreement, the Underwriter agrees to purchase from the District, and the District agrees to sell to the Underwriter the Series 2003 Bonds at an aggregate purchase price of \$3,360,561.15, plus interest accrued on the Series 2003 Bonds from the 1<sup>st</sup> day of April, 2003, to the date of the Closing, as hereinafter defined. This purchase price reflects an underwriter's discount of \$58,800 and a net premium of \$561.15. The Series 2003 Bonds shall mature on the dates and in the amounts set forth in Exhibit A hereto, and shall bear interest, payable semiannually on March 1 and September 1, commencing September 1, 2003. The Series 2003 Bonds are subject to optional redemption as set forth in Exhibit A hereto.

The Underwriter agrees to make a bona fide public offering of the Series 2003 Bonds at the initial offering prices as set forth in the Official Statement (as hereinafter defined) and in Exhibit A, which prices may be changed from time to time by the Underwriter.

2. Concurrently with the acceptance of this Purchase Agreement by the District, the District shall deliver or cause to be delivered to the Underwriter five copies of the Official Statement relating to the Series 2003 Bonds, substantially in the form of the Official Statement dated April 17, 2003 (the "Official Statement"), signed on behalf of the District by its Chairman as requested below.

3. The Official Statement has been approved for distribution by the Resolution. The District authorizes the use of copies of the Official Statement and the Resolution in connection with the public offering and sale of the Series 2003 Bonds.

On April 17, 2003, the District delivered to the Underwriter the Official Statement which is hereby deemed "final" within the meaning of clause (b)(1) of Rule 15c2-12 ("Rule 15c2-12") under the Securities and Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) and Rule G-32 and all other rules of the Municipal Securities Rulemaking Board.

As soon as practicable following receipt thereof, the Underwriter shall deliver the Official Statement, and any supplement or amendment thereto, to a nationally recognized municipal securities information repository.

4. At 10:00 a.m. prevailing time, on April 30, 2003, or such other date as shall be agreed upon by the parties to this Purchase Agreement (the "Closing"), the District will deliver or cause to be delivered to the Underwriter, (a) the Series 2003 Bonds in the form of one certificate for each maturity fully registered in the name of CEDE & CO., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"), duly executed by the District and authenticated by the Registrar, and (b) at such other place as we mutually agree upon, will deliver to the Underwriter the other documents required in this Purchase Agreement and by the Resolution. Upon such delivery of the Series 2003 Bonds, the Underwriter will accept such delivery and pay the purchase price therefor, plus any accrued interest thereon, in immediately available funds to the order of the Depository Bank, for the account of the District. Such delivery shall be made at DTC (or at the offices of the Registrar, if "DTC Fast" delivery is used), with the payment and other requisite actions to be taken at the place designated by the parties to this Purchase Agreement. The Series 2003 Bonds shall be made available to the Underwriter at DTC forty-eight (48) hours before the Closing, provided that if DTC Fast delivery is used then the Series 2003 Bonds shall be made available to the Registrar by 4:00 p.m. on April 28, 2003, for the purpose of inspection and packaging. The District also agrees that it shall deliver to The Depository Trust Company the letter of representations, in the form required by The Depository Trust Company (the "DTC Letter of Representations") and the timely payment letter at the times required by The Depository Trust Company.

5. The District represents and warrants to the Underwriter and agrees that:

(a) The District is a public service district and a public corporation and political subdivision of the State of West Virginia in Berkeley County of said State. The Series 2003 Bonds are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), specifically Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act");

(b) The District shall have complied and will comply at the Closing in all respects with all applicable statutes and laws, including the Act;

(c) The District has full legal right, power and authority to issue bonds for purposes provided in the Resolution and to enter into this Purchase Agreement, to adopt the Resolution and to issue, sell and deliver the Series 2003 Bonds to the Underwriter as provided herein and to carry out and consummate all other transactions contemplated by each of the aforesaid documents;

(d) The proceeds of sale of the Series 2003 Bonds, together with other funds available therefor shall be sufficient to defease the Series 1993 A Bonds and the Series 1994

Bonds and the liens of the resolutions authorizing such bonds, all in accordance with the provisions of the Act;

(e) The information contained in the Preliminary Official Statement and in the Official Statement is and, as of the Closing Date, will be true and does not contain and will not contain any untrue statement of a material fact and does not omit and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(f) At the time of the District's acceptance hereof and (unless an event occurs of the nature described in subparagraph (i)) at all times during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the Series 2003 Bonds (as determined in accordance with subparagraph (k) hereof), the Official Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(g) If the Official Statement is supplemental or amended pursuant to subparagraph (i) at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the Series 2003 Bonds (as determined in accordance with subparagraph (k) hereof), the Official Statement as so supplemented or amended, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) If during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the Series 2003 Bonds (as determined in accordance with subparagraph (k) hereof) any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the District shall notify the Underwriter of any such event of which it has knowledge and, if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will prepare and furnish to the Underwriter (i) a reasonable number of copies of the supplement or amendment to the Official Statement in form and substance approved by the District and acceptable to the Underwriter, and (ii) if such notification shall be subsequent to the Closing, such legal opinion, certification, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement;

(i) Prior to the District's acceptance hereof, the District delivered to the Underwriter copies of the Preliminary Official Statement which the District deemed final (for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934) as of the date thereof; provided, however, that in making the representation and warranty contained in this paragraph (i) the District shall not be deemed to have made any additional representation or warranty as to the Preliminary Official Statement other than the representation and warranty contained in paragraph (f);

(j) For purposes of this Purchase Agreement, the End of the Underwriting Period for the Series 2003 Bonds shall mean the earlier of (a) the day of the Closing unless the District has been notified in writing by the Underwriter, on or prior to the day of the Closing, that the "end of the underwriting period" for the Series 2003 Bonds for all purposes of Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934 (the "Rule") will not occur on the day of the Closing, or (b) the date on which notice is given to the District by the Underwriter in accordance with the following sentence. In the event that the Underwriter has given notice to the District pursuant to clause (a) above that the "end of the underwriting period" for the Series 2003 Bonds will not occur on the day of the Closing, the Underwriter agrees to notify the District in writing as soon as practicable following the "end of the underwriting period" for the Series 2003 Bonds for all purposes of the Rule;

(k) At or prior to the Closing, the District shall have duly authorized, executed and delivered a written continuing disclosure undertaking (an "Undertaking") which complies with the provisions of Rule 15c2-12(b)(5) and which shall be substantially in the form described in the Preliminary Official Statement;

(l) You have duly authorized all necessary action to be taken by you for: (1) the issuance and sale of the Series 2003 Bonds upon the terms set forth herein, in the Resolution and in the Official Statement; (2) the execution and delivery of the Resolution and the Undertaking; (3) the approval of the Official Statement and the execution of the Official Statement by your Chairman; (4) the refunding of the Series 1993 A Bonds and the Series 1994 Bonds pursuant to the Resolution; (5) the execution, delivery, receipt and due performance of this Purchase Agreement, the Series 2003 Bonds, the Resolution, the Undertaking and any and all such other agreements and documents as may be required to be executed, delivered and received by you in order to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement; and (6) the carrying out, giving effect to and consummation of the transactions contemplated hereby and by the Resolution and the Official Statement;

(m) When delivered to and paid for by the Underwriter in accordance with the terms of this Purchase Agreement, the Series 2003 Bonds will have been duly authorized, executed, authenticated, issued and delivered and will constitute valid and binding obligations of the District payable solely from the Net Revenues and moneys pledged therefor under the Resolution and will be entitled to the benefit of the Resolution. Neither the credit nor the taxing power, if any, of the District shall be deemed to be pledged

to, nor shall a tax ever be levied for the payment of the principal of or the interest on the Series 2003 Bonds;

(n) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to your knowledge, threatened against or affecting you (or, to your knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Official Statement or the validity of the Series 2003 Bonds, the Undertaking, the Resolution, this Purchase Agreement or any agreement or instrument to which you are a party and which is used or contemplated hereby or by the Official Statement or the validity of the Series 2003 Bonds, the Resolution, the Undertaking, this Purchase Agreement or any agreement or instrument to which you are a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Official Statement;

(o) The execution and delivery of the Official Statement, this Purchase Agreement, the Series 2003 Bonds, the Resolution, the Undertaking and the other agreements contemplated hereby and by the Official Statement, and compliance with the provisions thereof, will not conflict with or constitute on your part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which you are subject or by which you are or may be bound, and to your knowledge all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated thereby have been obtained;

(p) The District has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the District is a bond issuer whose arbitrage certifications may not be relied upon;

(q) All financial statements of the District included as a part of the Preliminary Official Statement and the Official Statement (the "Financial Statements"), fairly present the District's financial condition as of the respective dates and the results of its operations for the respective periods therein set forth and have been prepared when so indicated in accordance with generally accepted accounting principles consistently applied and since the respective most recent dates as of which information is given in the Preliminary Official Statement or the Official Statement, there has not been any material change in the long-term debt or capitalization of the District or any material adverse change in the general affairs, management, financial position, or results of operations of the District and no material transactions or obligations other than in the ordinary course of business have been entered into with respect to the System by the District, except as reflected in or contemplated by the Official Statement; and

(r) Any certificate signed by the Chairman or any authorized officers and delivered to the Underwriter shall be deemed a representation and warranty by the District to the Underwriter as to the statements made therein. It is understood that the

representations, warranties and covenants by the District contained in this Section 5 and elsewhere in this Purchase Agreement shall not create any general obligation or liability of the District, and that any obligation or liability of the District hereunder or under the Resolution will be payable solely out of the Net Revenues and other income, charges and moneys derived by the District from, or in connection with the sale of the bonds, nor shall any member, official or employee of the District be personally liable therefor.

6. The Underwriter has entered into this Purchase Agreement in reliance upon the representations and agreements of the District made herein. The Underwriter's obligations under this Purchase Agreement are and shall be subject to the following further conditions:

(a) At or prior to the time of Closing, the Resolution and the Undertaking, as approved by the Underwriter or its counsel, shall have been approved by the appropriate parties, shall have been duly executed, acknowledged, sealed and delivered, shall be in full force and effect and shall not have been amended, modified or supplemented, except as therein permitted or as may have been agreed to in writing by the Underwriter.

(b) The Underwriter shall have the right to cancel its obligations hereunder to purchase the Series 2003 Bonds (such cancellation shall not constitute a default hereunder) by notifying the District in writing of its election to do so between the date hereof and the Closing Date, if at any time hereafter and prior to the Closing Date:

(i) Any legislation, rule or regulation shall be introduced in, or enacted by, the United States House of Representatives or the United States Senate or any committee thereof, or a decision by a court established under Article III of the Constitution of the United States of America, or the Tax Court of the United States, shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed, which, in the Underwriter's reasonable opinion, materially adversely affects the market price of the Series 2003 Bonds;

(ii) Any legislation, ordinance, rule or regulation shall be introduced in or enacted by any governmental body, department or agency of the State of West Virginia or political subdivision thereof, or a decision by any court of competent jurisdiction within the State of West Virginia shall have been rendered which, in the Underwriter's reasonable opinion, materially adversely affects the market price of the Series 2003 Bonds;

(iii) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other government agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering for sale of obligations of the general character of the Series 2003 Bonds, or the issuance, offering or sale of the Series 2003 Bonds, including all the underlying obligations, as contemplated hereby or by the Official Statement, is in violation of any provisions of the Securities Act of 1933, as amended and as then in effect, or the registration provisions of the

Securities and Exchange Act of 1934, as amended and as then in effect, or the qualification provisions of the Trust Indenture Act of 1939, as amended and as then in effect;

(iv) Any event shall have occurred or information become known which, in the Underwriter's reasonable opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement or the Official Statement or the Underwriter shall have determined that the Preliminary Official Statement or the Official Statement contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(v) A general banking moratorium shall have been established by Federal, New York State or West Virginia authorities;

(vi) In the reasonable opinion of the Underwriter, the market price of the Series 2003 Bonds, or the market price generally of obligations of the general character of the Series 2003 Bonds, has been adversely affected because (1) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, (2) the New York Stock Exchange, other national securities exchange or any governmental authority shall have imposed as to the Series 2003 Bonds or similar obligations any material restrictions not now in force, or increased materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter, or (3) war or any outbreak of hostilities or other national or international calamity or crisis shall have occurred or any armed conflict shall have occurred or escalated to such a magnitude as in the reasonable opinion of the Underwriter to have a materially adverse effect on the ability of the Underwriter to market the Series 2003 Bonds;

(vii) An event described in paragraph 5(i) hereof shall have occurred which in the opinion of the Underwriter requires the preparation and publication of a supplement or amendment to the Official Statement, regardless of whether or not such a supplement or amendment to the Official Statement has been prepared and/or circulated, unless the Underwriter shall have otherwise agreed that this Purchase Agreement shall not be terminated as a result of such event; or

(viii) There shall have been any materially adverse change in the affairs of the District.

(c) At or prior to the Closing, the Underwriter and the District shall receive the following documents, in each case in form and substance satisfactory to us and our counsel:

(1) The unqualified approving opinion, dated as of the Closing Date, of Steptoe & Johnson PLLC, Bond Counsel, in the form attached as Appendix C to the Preliminary Official Statement accompanied by a supplementary opinion of Bond Counsel,

dated as of the Closing Date, substantially in the form attached hereto as Exhibit B and an opinion with respect to the defeasance of the Series 1993 A Bonds and the Series 1994 Bonds;

(2) The opinion of Hoy Shingleton, Esq., Martinsburg, West Virginia, Counsel for the District, dated the date of Closing and addressed to the Underwriter in the form attached hereto as Exhibit C;

(3) The opinion of Jackson Kelly PLLC, Charleston, West Virginia, counsel for the Underwriter, dated as of the Closing Date, substantially in the form attached hereto as Exhibit D;

(4) A certificate, satisfactory to the Underwriter, of the Chairman of the District or any other of your duly authorized officers satisfactory to the Underwriter, dated as of the Closing, to the effect that: (i) you have duly performed all of your obligations to be performed at or prior to the Closing and that each of your representations and warranties contained herein are true as of Closing, (ii) you have authorized, by all necessary action, the execution, delivery, receipt and due performance of the Series 2003 Bonds, the Resolution, the Undertaking and any and all such other agreements and documents as may be required to be executed, delivered and received by you in order to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement, (iii) to your knowledge no litigation is pending, or to your knowledge threatened, to restrain or enjoin the issuance or sale of the Series 2003 Bonds or in any way affecting any authority for or the validity of the Series 2003 Bonds, the Resolution or your existence or powers or the District's right to use the proceeds of the Series 2003 Bonds to refund the Series 1993 A Bonds and the Series 1994 Bonds, and (iv) the execution, delivery, receipt and due performance of the Series 2003 Bonds, the Resolution, the Undertaking and the other agreements contemplated hereby and by the Official Statement under the circumstances contemplated thereby and your compliance with the provisions thereof will not conflict with or constitute on your part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which you are subject or by which you are or may be bound;

(5) Verification of the debt service savings obtained by refunding the Series 1993 A and the Series 1994 Bonds by CoxHollida LLP, Certified Public Accountants and Consultants, Martinsburg, West Virginia;

(6) Copies of the Resolution, the Undertaking and this Purchase Agreement executed by the parties thereto;

(7) A Certificate of the Bond Registrar to the effect that all conditions precedent contained in the Resolution for the issuance of the Series 2003 Bonds have been met, and are entitled to the benefit and security of the Resolution;

(8) The Resolution, certified by an authorized official of the District under the seal of the District, as having been duly adopted by the District and as being in full

force and effect, with only such amendments, modifications or supplements as may have been agreed to by the Underwriter;

(9) A final order from the Public Service Commission of West Virginia approving the refunding of the Series 1993 A and the Series 1994 Bonds;

(10) The written consent of West Virginia Water Development Authority to the issuance of the Series 2003 Bonds on a first lien parity basis;

(11) Executed copies of the Undertaking described in paragraph 5(l), in form and substance satisfactory to the Underwriter and counsel to the Underwriter;

(12) A certificate of the District executed by an authorized officer thereof, dated the Closing Date and in form and substance satisfactory to the Underwriter and counsel to the Underwriter, to the effect that the District is obligated by such Undertaking and is in full compliance with all of its prior written continuing disclosure undertakings entered into pursuant to the provisions of Rule 15c2-12(b)(5);

(13) Evidence to the effect that the requirements of the Code have been satisfied by the filing of Internal Revenue Service Form 8038-G;

(14) The commitment from Ambac Assurance Corporation to insure the Series 2003 Bonds; and

(15) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Bond Counsel may reasonably request including the opinion of Bond Counsel with respect to the original issue discount, if any.

If the District shall be unable to satisfy or cause to be satisfied the conditions to the Underwriter's obligations in this Purchase Agreement or if the Underwriter's obligations shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and neither the Underwriter nor the District shall have any further obligations, claims or rights hereunder. However, the Underwriter may in its discretion waive in writing one or more conditions imposed by this Purchase Agreement for the protection of the Underwriter and proceed with the Closing.

7. The Underwriter shall be under no obligation to pay, and, if the Series 2003 Bonds are issued, the District shall pay or cause the District to be paid from the proceeds of the Series 2003 Bonds, any fees and expenses incident to the performance of the District's obligations hereunder including (i) all expenses in connection with the printing and distribution of the Official Statement and any amendment or supplement to either; (ii) all expenses in connection with the preparation, printing, issuance and delivery of the Series 2003 Bonds; (iii) the fees and disbursements of Steptoe & Johnson PLLC, Bond Counsel; (iv) the fees and disbursements, if any, of Hoy Shingleton, Esq., Counsel for the District; (v)

all advertising expenses in connection with the public offering of the Series 2003 Bonds; (vi) the insurance premium; (vii) the fees and expenses of the verification agent; (viii) fees and expenses of the Bond Registrar; and (ix) all other expenses and cost (including the fees and expenses of the District) for the authorization, issuance, sale and distribution of the Series 2003 Bonds.

8. The Underwriter shall pay from the underwriting spread all other expenses incurred by them in connection with the public offering and distribution of the Series 2003 Bonds, the fees and expenses of Counsel to the Underwriter and the fees and expenses in preparing the Preliminary Official Statement and Official Statement, the Blue Sky Survey, the Legal Investment Memoranda and this Purchase Agreement; and Blue Sky qualification and filing fees, including all out-of-pocket expenses, travel and other expenses.

9. For so long as the Underwriter, or dealers or banks, if any, participating in the distribution of the Series 2003 Bonds, are offering Series 2003 Bonds which constitute the whole or a part of their unsold participations, the District will: (a) not adopt any amendment of or supplement to the Official Statement to which, after having been furnished with a copy, the Underwriter shall object in writing or which shall be disapproved by Counsel for the Underwriter, unless, in the opinion of Counsel to the District, such amendment or supplement is required to make the Official Statement not misleading, and (b) if any event relating to or affecting the District shall occur as a result of which it is necessary, in the opinion of Bond Counsel or Counsel for the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, forthwith prepare and furnish to the Underwriter a reasonable number of copies of an amendment or a supplement to the Official Statement (in form and substance satisfactory to the Counsel for the Underwriter) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading. The expense of preparing such amendment or supplement shall be borne by the District. For the purposes of this paragraph, the District will furnish such information with respect to themselves as the Underwriter from time to time may request.

10. Neither the members or officers of the District nor their employees shall be personally liable for breach of any representation, agreement or warranty made by the District within this Purchase Agreement.

11. Any notice or other communication to be given under this Purchase Agreement may be given by delivering the same in writing as follows:

To the District:

Berkeley County Public Service District

83 Monroe Street  
Martinsburg, West Virginia 25401  
Attention: Chairman  
To the Underwriter:

Ross, Sinclair & Associates  
400 Democrat Drive  
Frankfort, Kentucky 40601  
Attention: Senior Vice President

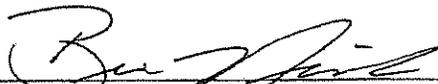
12. This Purchase Agreement is made solely for the benefit of the District and the Underwriter (including the successors or assigns of the Underwriter) and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof. All agreements of the District in this Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Series 2003 Bonds.

13. This Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

14. The approval of the Underwriter when required hereunder or the determination of its satisfaction with any document referred to herein shall be in writing signed by the Representative and delivered to the District. This Purchase Agreement shall become legally effective upon its acceptance by the District, as evidenced by the signature of the Executive Director of the District in the space provided hereinafter therefor.

15. This Purchase Agreement may be signed in counterparts.

ROSS, SINCLAIRE & ASSOCIATES

By:   
Its: Senior Vice President

ACCEPTED AND APPROVED:

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

By: \_\_\_\_\_  
Its: Executive Director

83 Monroe Street  
Martinsburg, West Virginia 25401  
Attention: Chairman  
To the Underwriter:

Ross, Sinclaire & Associates  
400 Democrat Drive  
Frankfort, Kentucky 40601  
Attention: Senior Vice President

12. This Purchase Agreement is made solely for the benefit of the District and the Underwriter (including the successors or assigns of the Underwriter) and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof. All agreements of the District in this Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Series 2003 Bonds.

13. This Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

14. The approval of the Underwriter when required hereunder or the determination of its satisfaction with any document referred to herein shall be in writing signed by the Representative and delivered to the District. This Purchase Agreement shall become legally effective upon its acceptance by the District, as evidenced by the signature of the Executive Director of the District in the space provided hereinafter therefor.

15. This Purchase Agreement may be signed in counterparts.

ROSS, SINCLAIRE & ASSOCIATES

By: \_\_\_\_\_  
Its: Senior Vice President

ACCEPTED AND APPROVED:

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

By: Paul S. Ashe  
Its: Executive Director

EXHIBIT A

**MATURITY SCHEDULE**

**\$1,330,000 Series 2003 A Bonds**

<u>Maturity Date</u>	<u>Maturity Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
3/1/04	\$300,000	2.0000%	1.2000%
3/1/05	265,000	2.0000	1.5500
3/1/06	275,000	2.0000	1.8500
3/1/07	280,000	2.2000	2.3000
3/1/08	110,000	2.5000	2.6500
3/1/09	50,000	2.9000	3.0000
3/1/10	50,000	3.2000	3.3000

**\$2,030,000 Series 2003 B Bonds**

<u>Maturity Date</u>	<u>Maturity Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
9/1/03	\$50,000	2.0000%	1.2000%
9/1/04	75,000	2.0000	1.2500
9/1/05	75,000	2.0000	1.6000
9/1/06	75,000	2.0000	1.9000
9/1/07	50,000	2.3500	2.3500
9/1/08	260,000	3.0000	2.7000
9/1/09	60,000	3.0000	3.0000
9/1/10	120,000	3.3000	3.3000
9/1/11	125,000	3.5500	3.5500
9/1/12	125,000	3.7000	3.7000
9/1/13	130,000	3.8000	3.8000
9/1/14	135,000	3.9500	3.9495
9/1/15	140,000	4.0000	4.1000
9/1/16	145,000	4.1000	4.2000
9/1/17	150,000	4.2000	4.3000
9/1/18	155,000	4.3000	4.4000
9/1/19	160,000	4.4000	4.5000

**(Accrued interest to be added)**

## **Optional Redemption**

The Series 2003 A Bonds are not subject to redemption prior to maturity.

The Series 2003 B Bonds maturing on and after September 1, 2014, are subject to redemption prior to maturity, at the option of the District, as a whole at any time and in part on any interest payment date, in inverse order of maturity and by random selection within maturities if less than all of any maturity, at a redemption price of par, plus interest accrued to the date fixed for redemption.

EXHIBIT B

[Letterhead of Steptoe & Johnson PLLC]

[Date of Closing]

Berkeley County Public Service District  
83 Monroe Street  
Martinsburg, West Virginia 25401

Ross, Sinclaire & Associates  
400 Democrat Drive  
Frankfort, Kentucky 40601

\$3,360,000

Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003A (Bank Qualified) and  
Series 2003 B (Non-Bank Qualified)

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance and sale by Berkeley County Public Service District (the "District") of its \$3,360,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2003A (Bank Qualified) and Series 2003 B (Non-Bank Qualified) (collectively, the "Series 2003 Bonds"). In our capacity as Bond Counsel, we are delivering an opinion of even date herewith concerning the legality of the Series 2003 Bonds and the exclusion of interest on the Series 2003 Bonds from gross income for federal income tax purposes (the "Bond Opinion"). We have examined the documents and instruments as described in the Bond Opinion, the Official Statement and such other matters as we have deemed necessary or appropriate to render this opinion. Words and terms used in this opinion shall have the meanings assigned to them in the Bond Purchase Agreement (the "Purchase Agreement") dated April 17, 2003, between the District and the Underwriter and approved by the District.

Based upon the foregoing, we are of opinion that:

(1) The Purchase Agreement has been authorized, executed and delivered by the District and, assuming due authorization, execution and delivery by the other parties thereto, is a legal, valid, binding and enforceable obligation of the District (except to the extent that enforceability may be limited by bankruptcy, insolvency or other laws or equitable principles affecting creditors' rights generally).

(2) The District, under the Act, has full power and authority to adopt the Resolution, enter into the Undertaking and the Purchase Agreement and perform its obligations thereunder.

(3) The District has duly ratified the distribution of the Preliminary Official Statement, the Official Statement has been duly approved, signed and delivered by the District, and the District has authorized the distribution of the Official Statement and the use thereof by the Underwriter in connection with the public offering of the Series 2003 Bonds.

(4) The statements and information contained in the Official Statement under the captions or subcaptions "The Series 2003 Bonds," "Security for the Series 2003 Bonds," "Financing Plan," "Tax Matters," "Legal Matters," "Continuing Disclosure," and, if applicable, the definitions and the summary of the Resolution in Appendix D to the Official Statement (except for financial or statistical data therein as to which no opinion is hereby expressed) do not contain any untrue statement of a material fact or omit to state a material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading in any material respect.

(5) The Series 2003 Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Resolution is exempt from qualification as an indenture pursuant to the Trust Indenture Act of 1939, as amended.

Very truly yours,

STEPTOE & JOHNSON PLLC

EXHIBIT C

[Letterhead of Hoy Shingleton, Esq.]

[Date of Closing]

Berkeley County Public Service District  
83 Monroe Street  
Martinsburg, West Virginia 25401

Ross, Sinclair & Associates  
400 Democrat Drive  
Frankfort, Kentucky 40601

\$3,360,000

Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003A (Bank Qualified) and  
Series 2003 B (Non-Bank Qualified)

Ladies and Gentlemen:

We have acted as counsel for Berkeley County Public Service District (the "District") and have acted as such in connection with the sale of the above-referenced Bonds (collectively, the "Series 2003 Bonds"), which are being delivered and sold pursuant to a Bond Purchase Agreement dated as of April 17, 2003 (the "Purchase Agreement") between Ross, Sinclair & Associates (the "Underwriter") and the District. Any capitalized terms used herein and not defined shall have the meaning assigned to it in the Purchase Agreement.

In this connection, we have reviewed and examined certain proceedings and documents with respect to the Series 2003 Bonds, any such records, certificates and other documents as we have considered necessary or appropriate for the purposes of this opinion, the Constitution and the laws of the State of West Virginia, specifically Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), the Resolution of the District relating to the Series 2003 Bonds adopted on April 14, 2003, as supplemented and amended by a resolution adopted April 14, 2003 (collectively, the "Resolution"), the Undertaking, the Purchase Agreement, the Official Statement dated April 17, 2003, with respect to the issuance and offering of the Series 2003 Bonds (collectively, the "Official Statement") and a closing certificate of the District. Based on such review and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

1. The District is a public service district and a public corporation and political subdivision of the State of West Virginia. The District is authorized by the laws of the State of West Virginia, as provided by the Act, to enter into and perform its obligations under the Resolution, the Undertaking and the Purchase Agreement.

2. The District has full power and authority to consummate all transactions contemplated by the Series 2003 Bonds, the Purchase Agreement, the Undertaking and any and other agreements relating thereto, to which the District is a party.

3. The District has duly authorized all action necessary to be taken by it or on its behalf for (i) the execution and delivery of the Undertaking and the Purchase Agreement; (ii) the approval of the distribution of the Official Statement; (iii) the ratification of the actions of the District and the issuance and delivery of the Series 2003 Bonds upon the terms set forth in the Resolution; and (iv) the carrying out, giving effect to and consummation of the transactions contemplated thereby.

4. The Undertaking and the Purchase Agreement have been duly and validly authorized, executed and delivered by the District and the same are in full force and effect as of the date hereof and are valid and legally binding obligations of the District, enforceable against the District in accordance with their respective terms, except to the extent the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally.

5. The Resolution has been duly adopted at meetings of the governing body (Board) of the District which were called and held pursuant to law and in accordance with all applicable open meeting laws and at which a quorum was present and acting at the time of the enactment of the Resolution.

6. The execution and delivery by the District of the Undertaking and the Purchase Agreement and the performance of its obligations thereunder do not and will not result in a violation of any provision of, or in default under, the West Virginia statutes organizing and governing the District or, to the best of my knowledge after diligent inquiry and review of the District's records, any agreement or other instrument to which the District is a party or by which it or its properties are bound.

7. All actions necessary to be taken by the District have been taken, and no additional approval, authorization, consent or other order of the District or any public board or body is legally required to allow the District to enter into and perform its obligations under the Purchase Agreement or as described in the Official Statement.

8. The District is not in violation of any provision of, or in default under, West Virginia statutes organizing and governing the District.

9. There are no legal or governmental actions, proceedings, inquiries or investigations pending or threatened by governmental authorities or to which the District is

a party or of which any property of the District is subject, except as described in the Official Statement, which, if determined adversely to the District, would individually or in the aggregate (i) materially and adversely affect the validity or the enforceability of the Series 2003 Bonds, the Undertaking or the Purchase Agreement, (ii) otherwise materially or adversely affect the ability of the District to comply with its obligations under the Purchase Agreement, or materially and adversely affect the transactions contemplated by the Official Statement to be engaged in by the District.

10. Based upon our experience as counsel for the District and on our review of the Official Statement, and after diligent inquiry, the statements and information contained in the Official Statement under the captions or subcaptions "Financing Plan," "The Series 2003 Bonds," "Security for the Series 2003 Bonds," "The System," "Litigation," and "Continuing Disclosure" do not contain any untrue statement of a material fact or omit to state any material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading in any material respect.

We hereby consent to the references made to us in the Official Statement.

Very truly yours,

EXHIBIT D

[Date of Closing]

Ross, Sinclaire & Associates  
400 Democrat Drive  
Frankfort, Kentucky 40601

\$3,360,000  
Berkeley County Public Service District (West Virginia)  
Water Refunding Revenue Bonds,  
Series 2003A (Bank Qualified) and  
Series 2003 B (Non-Bank Qualified)

Ladies and Gentlemen:

We have acted as counsel to you (the "Underwriter") in connection with the issuance and sale by Berkeley County Public Service District (the "District") of the above-referenced Bonds (collectively, the "Series 2003 Bonds"). In connection with rendering this opinion, we have examined the Official Statement dated April 17, 2003, the Bond Purchase Agreement dated April 17, 2003 (the "Purchase Agreement"), the Continuing Disclosure Agreement between you and the District dated as of the closing date (the "Undertaking"), and Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934, as amended (the "Rule"). Capitalized terms used but not defined herein shall have the meanings set forth in the Purchase Agreement.

Based upon the foregoing review, we are of the opinion that the Undertaking complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule.

Without having undertaken to determine independently the accuracy or completeness of the statements contained in the Official Statement, but on the basis of our conferences with representatives of the District, counsel for the District, Bond Counsel and the Underwriter, and our examination of certain documents referred to in the Official Statement, nothing has come to our attention that would lead us to believe that the Official Statement (excluding therefrom the financial and statistical data included in the Official Statement, including Appendix B thereto as to which we express no opinion) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make

the statements made therein, in light of the circumstances under which they were made, not misleading.

This opinion is solely for the benefit of, and may be relied upon only by, the Underwriter; and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, except that a copy hereof may be included in the transcript of closing documents pertaining to the delivery of the Series 2003 Bonds.

Very truly yours,



## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Agreement") dated as of April 30, 2003, by and between Berkeley County Public Service District (the "District") and Ross, Sinclair & Associates (the "Purchaser") in connection with the \$3,360,000 Berkeley County Public Service District (West Virginia) Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) and Series 2003 B (Non-Bank Qualified) (collectively, the "Bonds"), issued pursuant to the Bond Resolution adopted by the District on April 14, 2003, and the Supplemental Resolution adopted April 14, 2003 (collectively, the "Resolution"). Capitalized terms used in this Agreement shall have the respective meanings specified in the Resolution or in Article IV hereof. The parties agree as follows:

### ARTICLE I

#### The Undertaking

Section 1.1. Purpose. This Agreement shall constitute a written undertaking for the benefit of the holders of the Bonds, and is being executed and delivered solely to assist the Purchaser in complying with subsection (b)(5) of the Rule.

Section 1.2. Annual Financial Information. (a) The District shall provide Annual Financial Information with respect to each fiscal year of the District, commencing with the fiscal year ending June 30, 2003, by no later than 180 days after the end of the respective fiscal year, to each NRMSIR and the SID.

(b) The District shall provide, in a timely manner, notice of any failure of the District to provide the Annual Financial Information by the date specified in subsection (a) above to (i) either the MSRB or each NRMSIR, and (ii) the SID.

Section 1.3. Material Event Notices. (a) If a Material Event occurs, the District shall provide, in a timely manner, notice of each Material Event to (i) either the MSRB or each NRMSIR, (ii) the SID, and (iii) the Purchaser.

(b) Any notice of a defeasance of Bonds shall state whether the Bonds have been escrowed to maturity or to an earlier redemption date and the timing of such maturity or redemption, provided notices shall not be sent for mandatory sinking fund redemptions as set forth in the Official Statement.

Section 1.4. Additional Disclosure Obligations. The District acknowledges and understands that other State and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the District and that, under some circumstances, additional disclosures or other

action in addition to those required by this Agreement may be required to enable the District to fully discharge all of its duties and obligations under such laws.

Section 1.5. Additional Information. Nothing in this Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information or notice of Material Event hereunder, in addition to that which is required by this Agreement. If the District chooses to do so, the District shall have no obligation under this Agreement to update such additional information or include it in any future Annual Financial Information or notice of a Material Event hereunder.

Section 1.6. No Previous Non-Compliance. The District represents that since July 3, 1995, it has not failed to comply in any material respect with any previous undertaking in a written contract or agreement, as entered into by the District, as issuer, specified in paragraph (b)(5)(i) of the Rule.

## ARTICLE II

### Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of this Agreement if the District provides Annual Financial Information by specific reference to documents (i) either (1) provided to each NRMSIR existing at the time of such reference and the SID or (2) filed with the SEC, or (ii) if such document is an Official Statement, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Transmission of Information and Notices. Unless otherwise required by law, the District shall employ such methods of information and notice transmission as it shall so determine.

Section 2.4. Fiscal Year. The District's current fiscal year is the twelve-month period ending on June 30. The District shall promptly notify (i) each NRMSIR, (ii) the SID and (iii) the Purchaser of each change in its fiscal year.

## ARTICLE III

### Effective Date, Termination, Amendment and Enforcement

Section 3.1. Effective Date; Termination. (a) This Agreement shall be effective upon the issuance of the Bonds.

(b) The District's obligations under this Agreement shall terminate upon a legal defeasance, prior redemption or payment in full of all of the Bonds.

(c) This Agreement, or any provision hereof, shall be null and void in the event that the District (1) delivers to the Purchaser an opinion of counsel, addressed to the District and the Purchaser, to the effect that those portions of the Rule which require this Agreement, or such provision, as the case may be, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion, and (2) delivers copies of such opinion to each NRMSIR and the SID.

Section 3.2. Amendment. (a) This Agreement may be amended, by written agreement of the parties, without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the District or the type of business conducted thereby, (2) this Agreement as so amended would have complied with the requirements of the Rule as of the date of this Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the District shall have delivered to the Purchaser an opinion of counsel, addressed to the District and the Purchaser, to the same effect as set forth in clause (2) above, (4) the District shall have delivered to the Purchaser an opinion of Counsel or a determination by a person, in each case unaffiliated with the District (such as bond counsel or the Purchaser) and acceptable to the District, addressed to the District and the Purchaser, to the effect that the amendment does not materially impair the interests of the holders of the Bonds, and (5) the District shall have delivered copies of such opinion(s) and amendment to each NRMSIR and the SID.

(b) This Agreement may be amended, by written agreement of the parties, without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Agreement which is applicable to this Agreement, (2) the District shall have delivered to the Purchaser an opinion of counsel, addressed to the District and the Purchaser, to the effect that performance by the District and Purchaser under this Agreement as so amended will not result in a violation of the Rule and (3) the District shall have delivered copies of such opinion and amendment to each NRMSIR and the SID.

(c) To the extent any amendment to this Agreement results in a change in the type of financial information or operating data provided pursuant to this Agreement, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof to the accounting principles to be followed by the District in preparing its financial statements, the Annual Financial Information for the fiscal year in which the change is made shall provide written explanation of such change or changes.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Agreement shall constitute a contract with and inure solely to the benefit of the holders from time to time of the Bonds, except that beneficial owners of Bonds shall be third-party beneficiaries of this Agreement and shall be deemed to be holders of Bonds for purposes of Section 3.3(b) hereof. The provisions of this Agreement shall create no rights in any person or entity except as provided in this subsection (a).

(b) The obligations of the District to comply with the provisions of this Agreement shall be enforceable (i) in the case of enforcement of obligations to provide Annual Financial Information and Material Event notices, by any holder of Outstanding bonds, or by the Purchaser on behalf of the holders of Outstanding bonds, or (ii), in the case of challenges to the adequacy of the Annual Financial Information so provided, by the Purchaser on behalf of the holders of Outstanding Bonds; provided, however, that the Purchaser shall not be required to take any enforcement action except at the direction of the holders of not less than 25% in aggregate principal amount of the Bonds at the time Outstanding who shall have provided the Purchaser with adequate security and indemnity. The holders' and Purchaser' rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the District's obligations under this Agreement.

(c) Any failure by the District or the Purchaser to perform in accordance with this Agreement shall not constitute a default or an Event of Default under the Resolution, and the rights and remedies provided by the Resolution upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Agreement shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Agreement shall be instituted in a court of competent jurisdiction in the State; provided, however, that to the extent this Agreement addresses matters of federal securities laws, including the Rule, this Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

## ARTICLE IV

### Definitions

Section 4.1. Definitions. The following items used in this Agreement shall have the following respective meanings:

(1) "Annual Financial Information" means, collectively, (i) the District's Annual Financial Report (or any successive document which sets forth comprehensive information relating to the financial position of the District), (ii) operating information similar to that set forth in the Official Statement subsection "The System", and (iii) the information regarding amendments to this Agreement required pursuant to Sections 3.2(c) and (d) of this Agreement. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

(2) "Audited Financial Statements" means the annual financial statements, if any, of the District, audited by such auditor as shall then be required or permitted by State law. Audited Financial Statements shall be prepared in accordance with GAAP.

(3) "Counsel" means Steptoe & Johnson PLLC, Charleston, West Virginia, or other nationally recognized bond counsel or counsel expert in federal securities law.

(4) "GAAP" means generally accepted accounting principles as prescribed from time to time for governmental units by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or any successor to the duties and responsibilities of either of them.

(5) "Material Event" means any of the following events with respect to the Bonds, whether relating to the District or otherwise, if material:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax-exempt status of the security;
- (vii) modifications to rights of security holders;
- (viii) bond calls;
- (ix) defeasances;

- (x) release, substitution, or sale of property securing repayment of the securities; and
- (xi) rating changes.

(6) "MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

(7) "NRMSIR" means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule. The NRMSIRs as of the date of this Agreement and filing information relating to such NRMSIRs are set forth in Exhibit A hereto.

(8) "Official Statement" means "final official statement," as defined in paragraph f(3) of the Rule.

(9) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 CFR Part 240, § 240.15c2-12), as in effect on the date of this Agreement, including any official interpretations thereof issued either before or after the effective date of this Agreement which are applicable to this Agreement.

(10) "SEC" means the United States Securities and Exchange Commission.

(11) "SID" means, at any time, a then-existing State information depository, if any, as operated or designated as such by or on behalf of the State for the purposes referred to in the rule. As of the date of this Agreement, there is no SID.

(12) "State" means the State of West Virginia.

(13) "Unaudited Financial Statements" means the same as Audited Financial Statements, except that they shall not have been audited.

## ARTICLE V

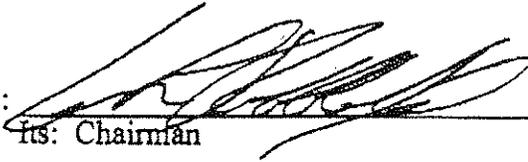
### Miscellaneous

Section 5.1. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

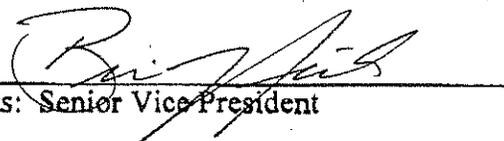
Section 5.2. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof or thereof, or the Bonds, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by their duly authorized representatives, all as of the date first above written.

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

By:   
Its: Chairman

ROSS, SINCLAIRE & ASSOCIATES

By:   
Its: Senior Vice President

**EXHIBIT A  
to Continuing Disclosure Agreement**

Filing information relating to the Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission (subject to change):

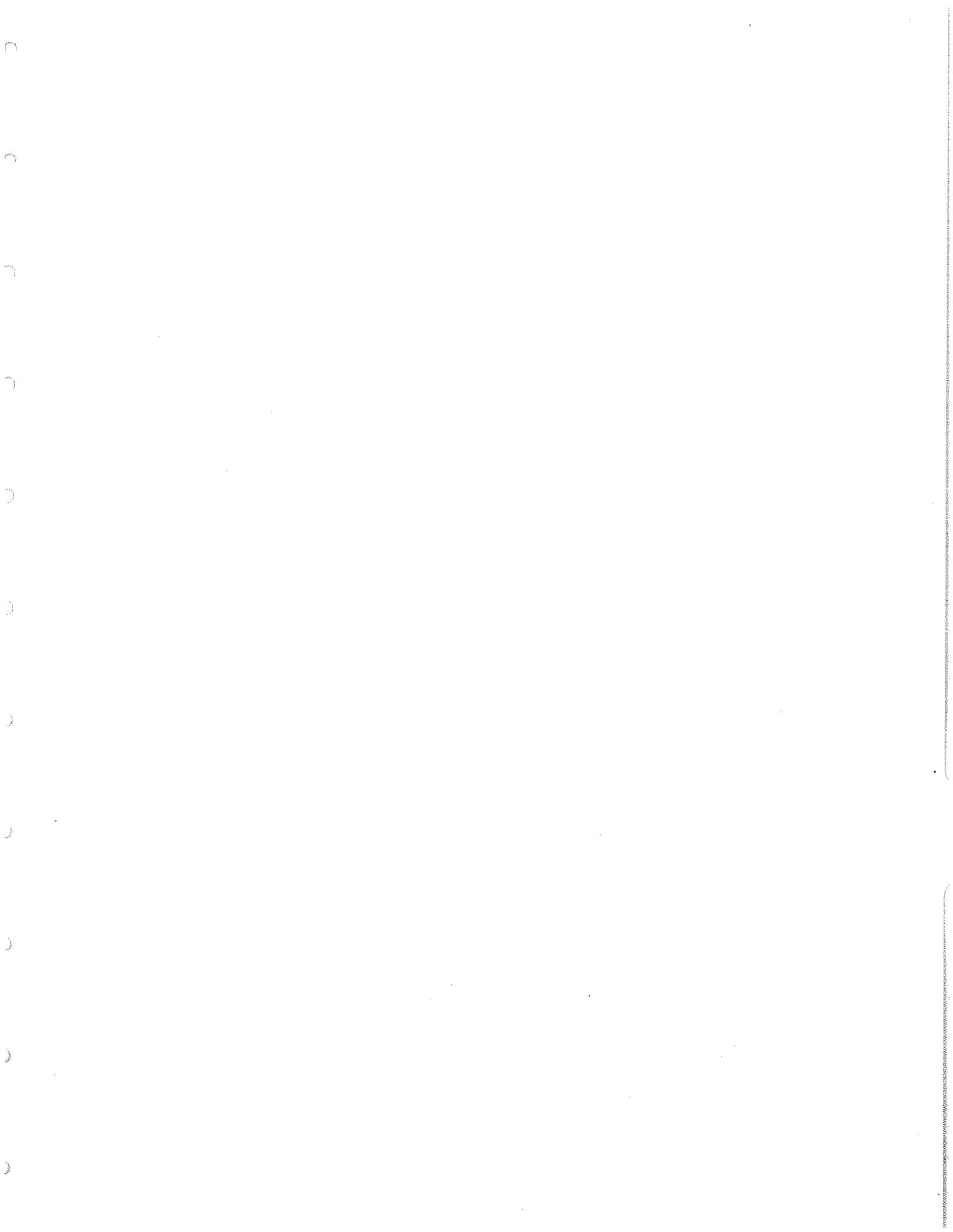
**Bloomberg Municipal Repository**  
100 Business Park Drive  
Skillman, NJ 08558  
Phone: (609) 279-3225  
Fax: (609) 279-5962  
Email: [Munis@Bloomberg.com](mailto:Munis@Bloomberg.com)

**FT Interactive Data**  
Attn: NRMSIR  
100 Williams Street  
New York, NY 10038  
Phone: (212) 771-6999  
Fax: (212) 771-7390 (Secondary Market Information)  
(212) 771-7391 (Primary Market Information)  
Email: [NRMSIR@FTID.com](mailto:NRMSIR@FTID.com)

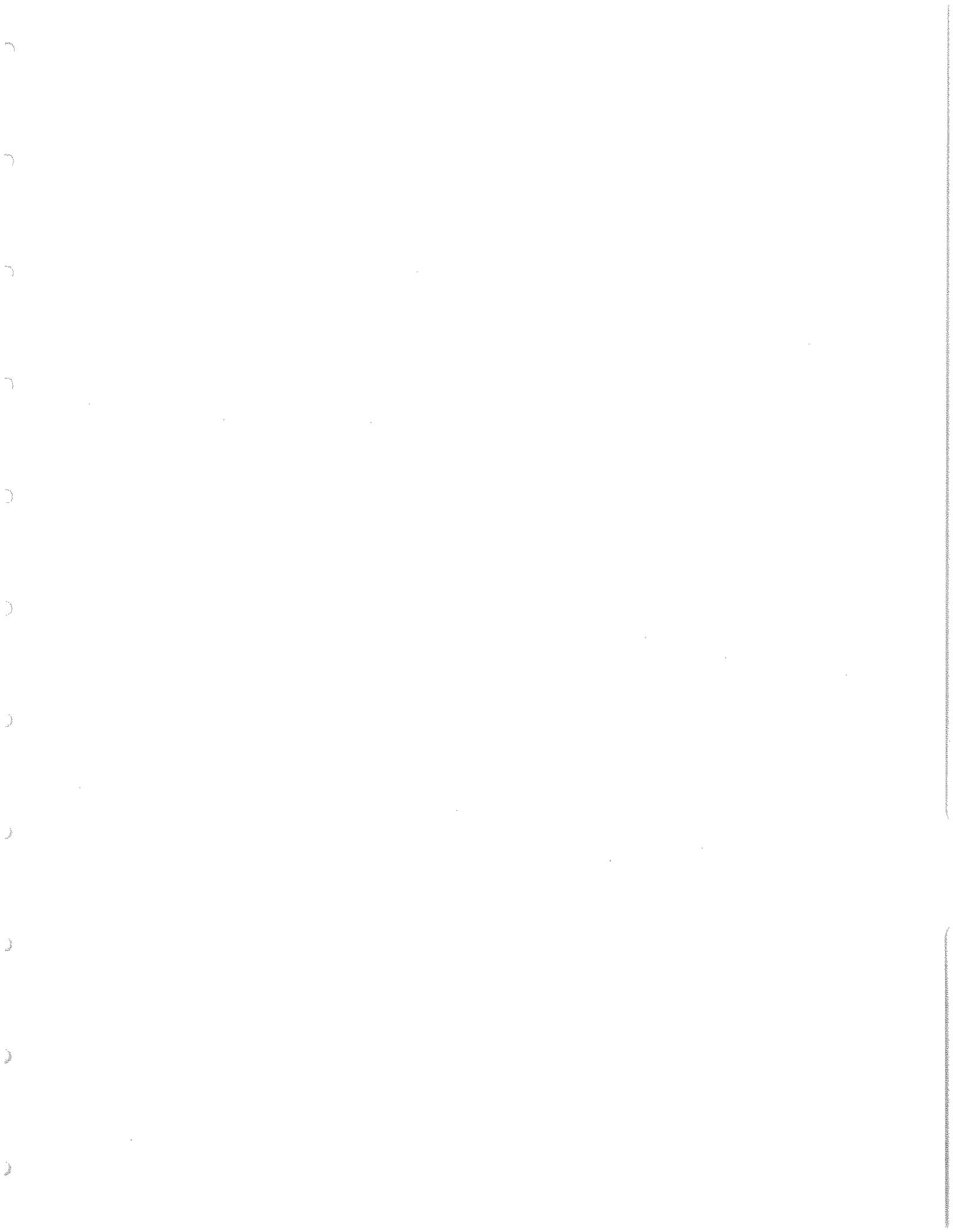
**DPC Data, Inc.**  
One Executive Drive  
Fort Lee, NJ 07024  
Phone: (201) 346-0701  
Fax: (201) 947-0107  
E-mail: [nrmsir@dpcdata.com](mailto:nrmsir@dpcdata.com)

**Standard & Poor's J. J. Kenny Repository**  
55 Water Street  
45th Floor  
New York, NY 10041  
Phone: (212) 438-4595  
Fax: (212) 438-3975  
Email: [nrmsir\\_repository@sandp.com](mailto:nrmsir_repository@sandp.com)

BN



[RESERVED]



# Ambac

Ambac Assurance Corporation  
One State Street Plaza, 15th Floor  
New York, New York 10004  
Telephone: (212) 668-0340

## Financial Guaranty Insurance Policy

Obligor: BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
(WEST VIRGINIA)

Policy Number: 20622BE

Obligations: \$1,330,000 Water Refunding Revenue Bonds, Series 2003 A  
(Bank Qualified), dated April 1, 2003, and maturing on March 1 in the  
years 2004 through 2010, both inclusive. The Paying Agent is West  
Virginia Municipal Bond Commission, Charleston, West Virginia.

Premium: \$19,156.41

Ambac Assurance Corporation (Ambac), a Wisconsin stock insurance corporation, in consideration of the payment of the premium and subject to the terms of this Policy, hereby agrees to pay to The Bank of New York, as trustee, or its successor (the "Insurance Trustee"), for the benefit of the Holders, that portion of the principal of and interest on the above-described obligations (the "Obligations") which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Obligor.

Ambac will make such payments to the Insurance Trustee within one (1) business day following written notification to Ambac of Nonpayment. Upon a Holder's presentation and surrender to the Insurance Trustee of such unpaid Obligations or related coupons, uncanceled and in bearer form and free of any adverse claim, the Insurance Trustee will disburse to the Holder the amount of principal and interest which is then Due for Payment but is unpaid. Upon such disbursement, Ambac shall become the owner of the surrendered Obligations and/or coupons and shall be fully subrogated to all of the Holder's rights to payment thereon.

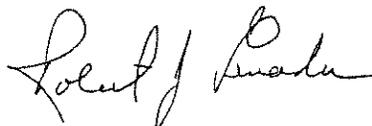
In cases where the Obligations are issued in registered form, the Insurance Trustee shall disburse principal to a Holder only upon presentation and surrender to the Insurance Trustee of the unpaid Obligation, uncanceled and free of any adverse claim, together with an instrument of assignment, in form satisfactory to Ambac and the Insurance Trustee duly executed by the Holder or such Holder's duly authorized representative, so as to permit ownership of such Obligation to be registered in the name of Ambac or its nominee. The Insurance Trustee shall disburse interest to a Holder of a registered Obligation only upon presentation to the Insurance Trustee of proof that the claimant is the person entitled to the payment of interest on the Obligation and delivery to the Insurance Trustee of an instrument of assignment, in form satisfactory to Ambac and the Insurance Trustee, duly executed by the Holder or such Holder's duly authorized representative, transferring to Ambac all rights under such Obligation to receive the interest in respect of which the insurance disbursement was made. Ambac shall be subrogated to all of the Holders' rights to payment on registered Obligations to the extent of any insurance disbursements so made.

In the event that a trustee or paying agent for the Obligations has notice that any payment of principal of or interest on an Obligation which has become Due for Payment and which is made to a Holder by or on behalf of the Obligor has been deemed a preferential transfer and theretofore recovered from the Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court of competent jurisdiction, such Holder will be entitled to payment from Ambac to the extent of such recovery if sufficient funds are not otherwise available.

As used herein, the term "Holder" means any person other than (i) the Obligor or (ii) any person whose obligations constitute the underlying security or source of payment for the Obligations who, at the time of Nonpayment, is the owner of an Obligation or of a coupon relating to an Obligation. As used herein, "Due for Payment", when referring to the principal of Obligations, is when the scheduled maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments), acceleration or other advancement of maturity; and, when referring to interest on the Obligations, is when the scheduled date for payment of interest has been reached. As used herein, "Nonpayment" means the failure of the Obligor to have provided sufficient funds to the trustee or paying agent for payment in full of all principal of and interest on the Obligations which are Due for Payment.

This Policy is noncancelable. The premium on this Policy is not refundable for any reason, including payment of the Obligations prior to maturity. This Policy does not insure against loss of any prepayment or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Ambac, nor against any risk other than Nonpayment.

In witness whereof, Ambac has caused this Policy to be affixed with a facsimile of its corporate seal and to be signed by its duly authorized officers in facsimile to become effective as its original seal and signatures and binding upon Ambac by virtue of the countersignature of its duly authorized representative.



President





Secretary



Authorized Representative



Authorized Officer of Insurance Trustee

Effective Date: April 30, 2003

THE BANK OF NEW YORK acknowledges that it has agreed to perform the duties of Insurance Trustee under this Policy.

Form No.: 2B-0012 (1/01)



## CERTIFICATE OF BOND INSURER

In connection with the issuance by Berkeley County Public Service District (West Virginia) (the "Obligor"), of its Water Refunding Revenue Bonds, consisting of \$1,330,000 in aggregate principal amount of Series 2003A (Bank Qualified) and \$2,030,000 in aggregate principal amount of Series 2003B (Non-Bank Qualified), dated April 1, 2003 (the "Obligations"), Ambac Assurance Corporation ("Ambac") is issuing financial guaranty insurance policies (the "Insurance Policies") guaranteeing the payment of principal and interest when due on the Obligations, all as more fully set out in the Insurance Policies.

**Ambac**

On behalf of Ambac, the undersigned hereby certifies that:

(i) the Insurance Policies are unconditional and recourse obligations of Ambac (enforceable by or on behalf of the holders of the Obligations) to pay the scheduled payments of interest and principal on the Obligations in the event of a Nonpayment as defined in the Insurance Policies;

(ii) the insurance premiums of \$19,156.41 for the Series A Bonds and \$37,548.03 for the Series B Bonds were determined in arm's length negotiations in accordance with our standard procedures, is required to be paid as a condition to the issuance of the Insurance Policies and represent reasonable charges for the transfer of credit risk;

(iii) no portion of such premium represents a payment for any direct or indirect services other than the transfer of credit risk, including costs of underwriting or remarketing the Obligations or the cost of insurance for casualty of Obligation financed property;

(iv) we are not co-obligors on the Obligations and do not reasonably expect that we will be called upon to make any payment under the Insurance Policies;

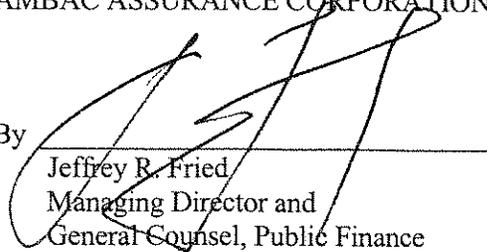
(v) the Obligor is not entitled to a refund of any portion of premium for the Insurance Policies in the event that the Obligations are retired prior to their stated maturity; and

(vi) we would not have issued the Insurance Policies in the absence of a debt service reserve fund of the size and type established by the documents pursuant to which the Obligations are being issued, and it is normal and customary to require a debt service reserve fund of such a size and type in similar transactions.

IN WITNESS WHEREOF, Ambac Assurance Corporation has caused this certificate to be executed in its name on this 30th day of April, 2003, by one of its officers duly authorized as of such date.

AMBAC ASSURANCE CORPORATION

By

  
\_\_\_\_\_  
Jeffrey R. Fried  
Managing Director and  
General Counsel, Public Finance



April 30, 2003

Berkeley County Public Service  
District, West Virginia  
83 Monroe Street  
Martinsburg, WV 25401

Ross, Sinclaire & Associates, Inc.  
400 Democrat Drive  
Frankfort, KY 40601

Steptoe & Johnson, PLLC  
707 Virginia Street, East  
Charleston, WV 25301

**Ambac**

Ladies and Gentlemen:

This opinion has been requested of the undersigned, Managing Director and General Counsel, Public Finance of Ambac Assurance Corporation, a Wisconsin stock insurance corporation ("Ambac Assurance"), in connection with the issuance by Ambac Assurance of a certain Financial Guaranty Insurance Policies, effective as of the date hereof (the "Policies"), insuring Berkeley County Public Service District (West Virginia) (the "Obligor"), Water Refunding Revenue Bonds, consisting of \$1,330,000 in aggregate principal amount of Series 2003A (Bank Qualified) and \$2,030,000 in aggregate principal amount of Series 2003B (Non-Bank Qualified), dated April 1, 2003 (the "Obligations").

In connection with my opinion herein, I have examined the Policies, such statutes, documents and proceedings as I have considered necessary or appropriate under the circumstances to render the following opinion, including, without limiting the generality of the foregoing, certain statements contained in the Official Statement of the Obligor dated April 17, 2003 relating to the Obligations (the "Official Statement") under the headings "FINANCIAL GUARANTY INSURANCE" and "APPENDIX E - SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY".

Based upon the foregoing and having regard to legal considerations I deem relevant, I am of the opinion that:

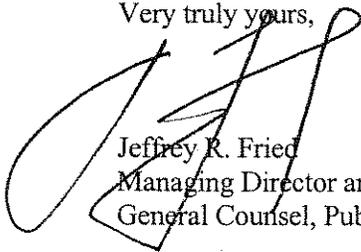
1. Ambac Assurance is a stock insurance corporation duly organized and validly existing under the laws of the State of Wisconsin and duly qualified to conduct an insurance business in the State of West Virginia.
2. Ambac Assurance has full corporate power and authority to execute and deliver the Policies and the Policies have been duly authorized, executed and delivered by Ambac Assurance and constitute legal, valid and binding obligations of Ambac Assurance enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) of such obligations may be limited by any applicable bankruptcy, insolvency, liquidation, rehabilitation or other similar law or enactment now or hereafter enacted affecting the enforcement of creditors' rights.
3. The execution and delivery by Ambac Assurance of the Policies will not, and the consummation of the transactions contemplated thereby and the satisfaction of the terms thereof will not, conflict with or result in a breach of any of the terms,

conditions or provisions of the Certificate of Authority, Articles of Incorporation or By-Laws of Ambac Assurance, or any restriction contained in any contract, agreement or instrument to which Ambac Assurance is a party or by which it is bound or constitute a default under any of the foregoing.

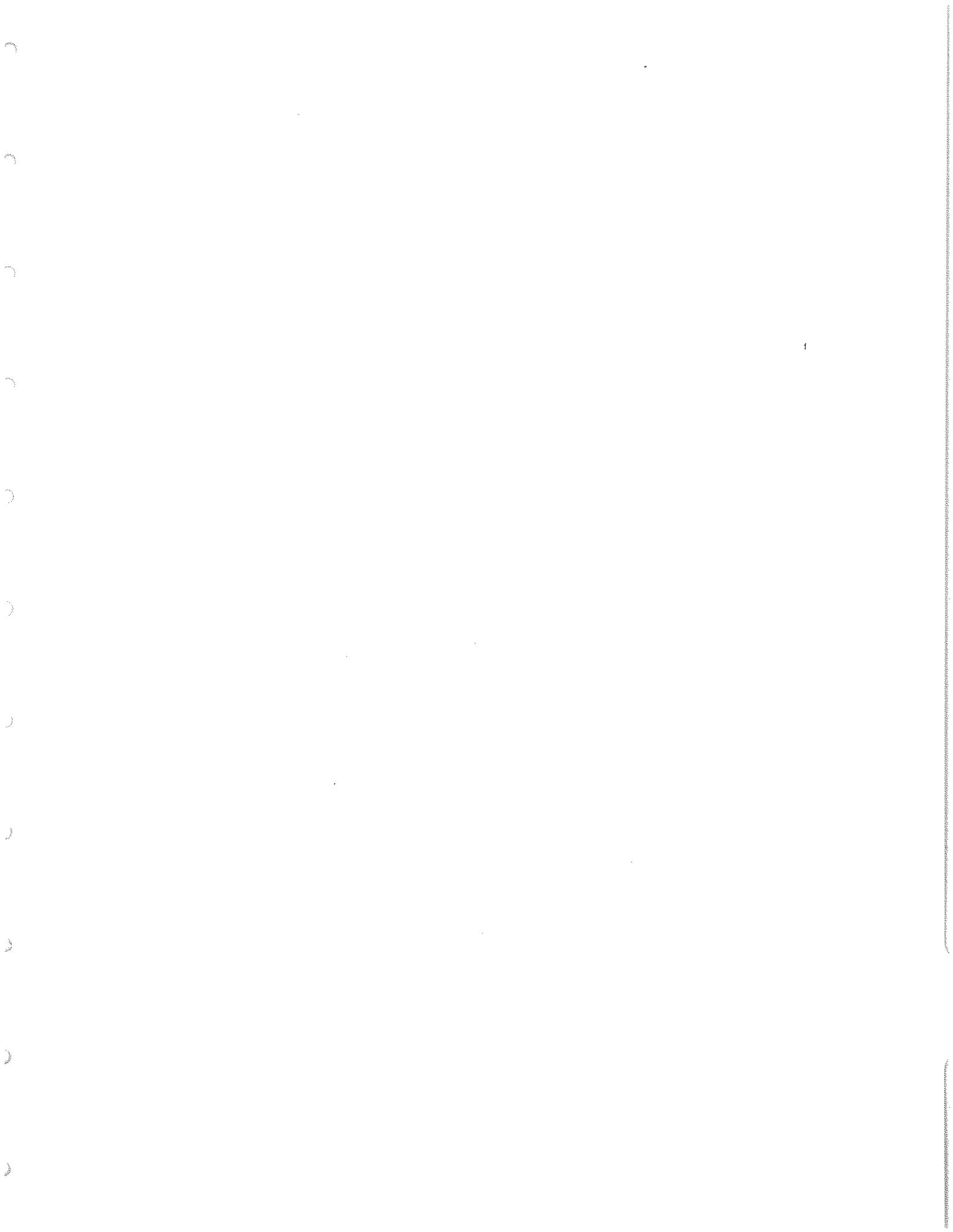
4. Proceedings legally required for the issuance of the Policies have been taken by Ambac Assurance and licenses, orders, consents or other authorizations or approvals of any governmental boards or bodies legally required for the enforceability of the Policies have been obtained; any proceedings not taken and any licenses, authorizations or approvals not obtained are not material to the enforceability of the Policies.
5. The statements contained in the Official Statement under the heading "FINANCIAL GUARANTY INSURANCE", insofar as such statements constitute summaries of the matters referred to therein, accurately reflect and fairly present the information purported to be shown and, insofar as such statements describe Ambac Financial Group, Inc. and Ambac Assurance, fairly and accurately describe Ambac Financial Group, Inc. and Ambac Assurance.
6. The form of Policies contained in the Official Statement under the heading "APPENDIX E – SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY" is a true and complete copy of the form of Policies.

The opinions expressed herein are solely for your benefit, and may not be relied upon by any other person.

Very truly yours,



Jeffrey R. Fried  
Managing Director and  
General Counsel, Public Finance



\$3,360,000

BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)

Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)  
and  
Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

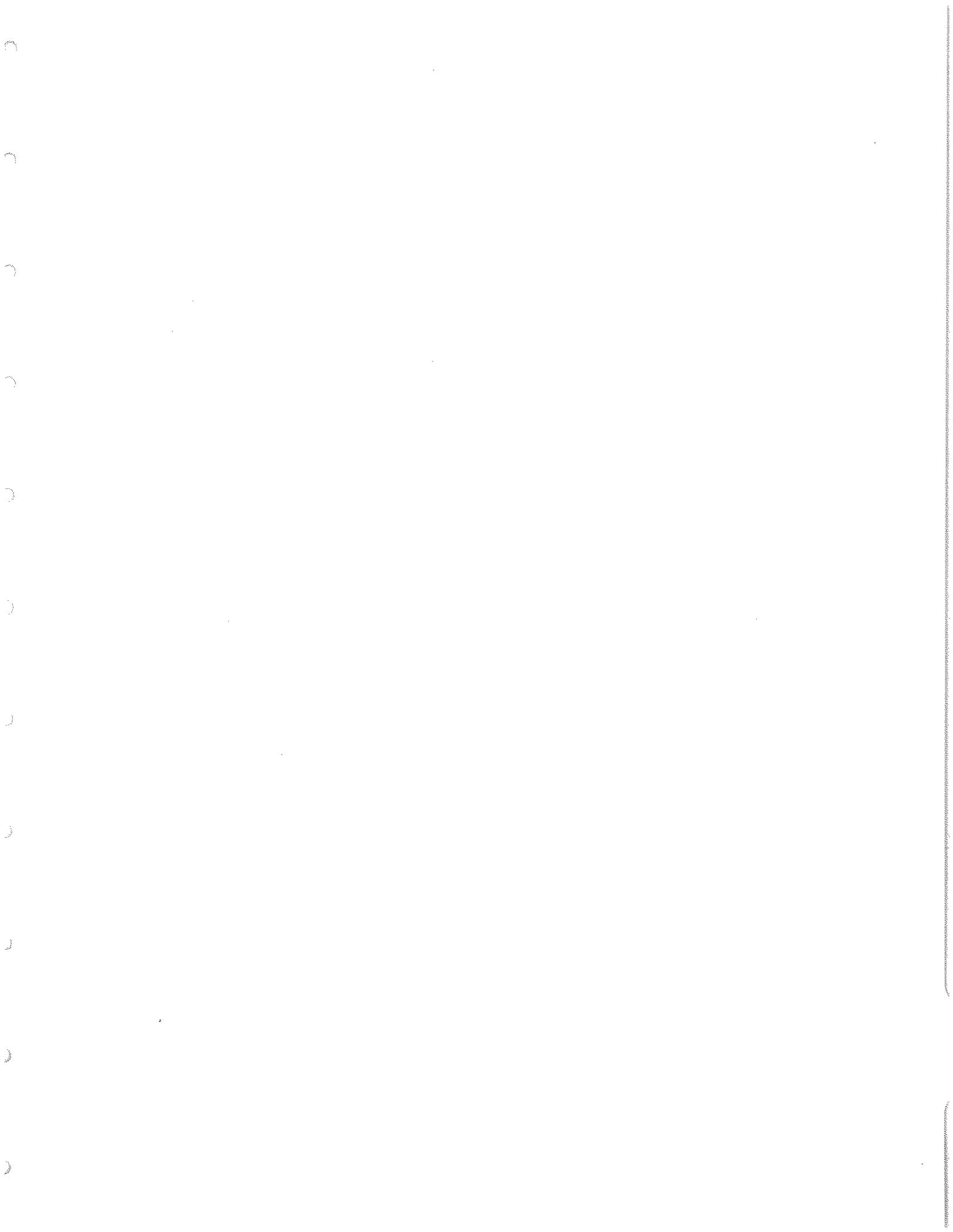
Farmers & Merchants Bank and Trust, a state banking association in Martinsburg, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution of Berkeley County Public Service District (the "Issuer"), adopted April 14, 2003, and a Supplemental Resolution of the Issuer adopted April 14, 2003 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified), dated April 1, 2003, in the principal amount of \$1,330,000 and the Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified), dated April 1, 2003, in the principal amount of \$2,030,000 (collectively, the "Series 2003 Bonds"), and agrees to serve as Depository Bank in connection with the Series 2003 Bonds, all as set forth in the Bond Legislation.

WITNESS my signature this 30th day of April, 2003.

FARMERS & MERCHANTS BANK AND TRUST

By:   
Its Authorized Officer

04/28/03  
067780.00002





# Blanket Issuer Letter of Representations

[To be Completed by Issuer]

BERKELEY COUNTY PUBLIC SERVICE DISTRICT

[Name of Issuer]

October 18, 2002

[Date]

Underwriting Department—Eligibility  
The Depository Trust Company  
55 Water Street 19th Floor  
New York, NY 10041-0099

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request be made eligible for deposit by The Depository Trust Company ("DTC").

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that Issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

Note:

Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

Very truly yours,

Berkeley County Public Service District

(Issuer)

*William T. Alexander, II*  
By: (Authorized Officer's Signature)

William T. Alexander, II, Chairman

(Print Name)

83 Monroe Street

(Street Address)

Martinsburg, WV

(City)

(State)

25401

(Zip Code)

Received and Accepted:

THE DEPOSITORY TRUST COMPANY

By: *Danise Russo*

(304) 264-0995

(Phone Number)

SCHEDULE A

(To Blanket Issuer Letter of Representations)

**SAMPLE OFFERING DOCUMENT LANGUAGE  
DESCRIBING BOOK-ENTRY-ONLY ISSUANCE**

(Prepared by DTC—bracketed material may be applicable only to certain issues)

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds \$200 million, one certificate will be issued with respect to each \$200 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.]

2. DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

[Beneficial Owners of the Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners, or in the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.]

[6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Securities. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

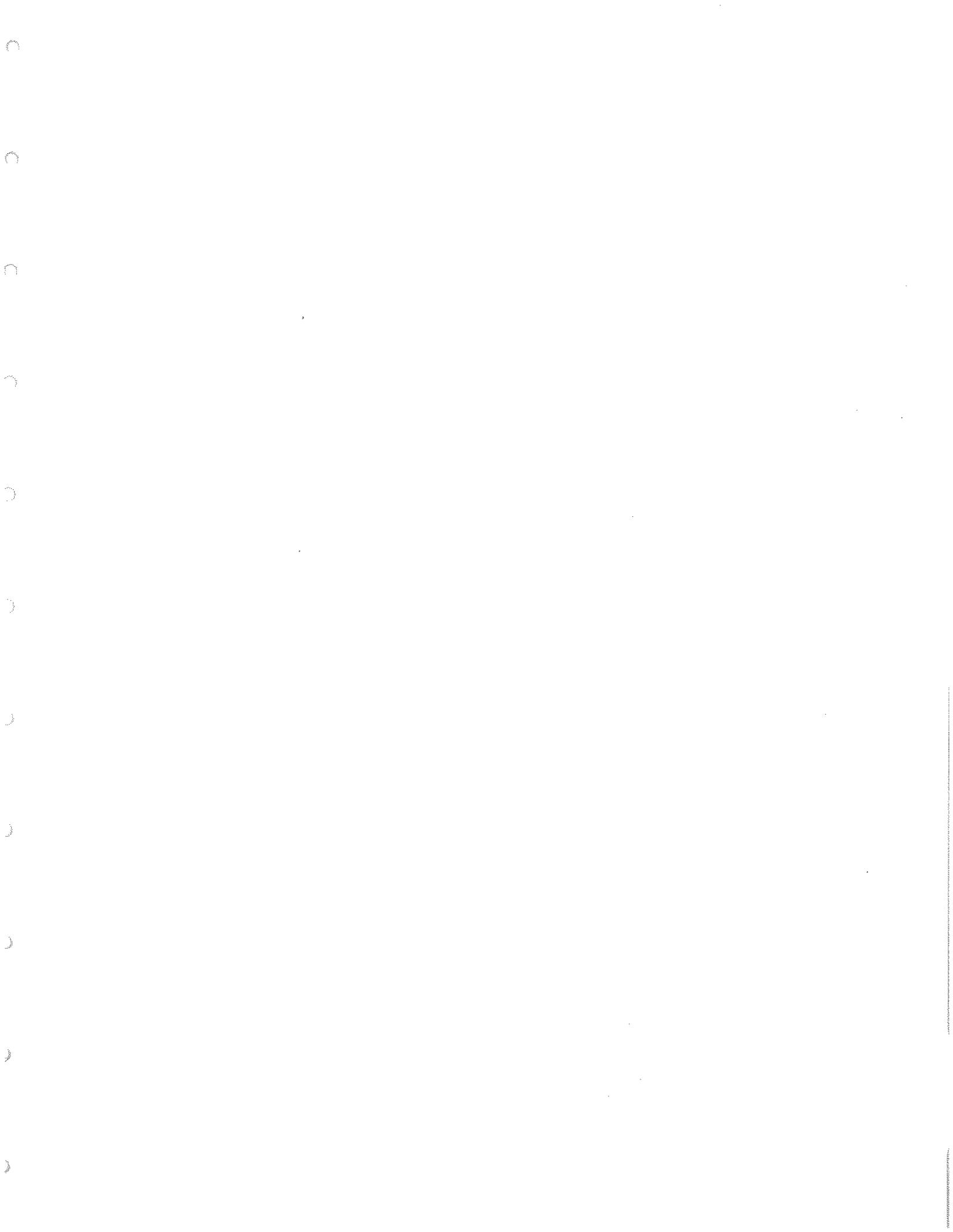
8. Principal and interest payments on the Securities will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC (nor its nominee), Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to Beneficial Owners is the responsibility of Direct and Indirect Participants.

[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered securities to [Tender/Remarketing] Agent's DTC account.]

10. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Security certificates are required to be printed and delivered.

11. Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered.

12. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.



\$3,360,000

BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)

Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)  
and  
Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified)

REGISTRAR AGREEMENT

THIS AGREEMENT, dated as of the 30th day of April, 2003, by and between BERKELEY COUNTY PUBLIC SERVICE DISTRICT, a public service district, a public corporation and political subdivision of the State of West Virginia (the "Issuer"), and FIFTH THIRD BANK, Cincinnati, Ohio, an Ohio banking corporation (the "Bank").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,330,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) and \$2,030,000 aggregate principal amount of Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified), in fully registered form (collectively, the "Series 2003 Bonds"), pursuant to a Resolution adopted April 14, 2003 as supplemented (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Series 2003 Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Agreement does appoint the Bank to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Agreement by the Issuer and the Bank and during the term hereof, the Bank does accept and shall have and agrees to perform all of the powers and duties of Registrar, as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Series 2003 Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the excludability from gross income of interest on the Series 2003 Bonds for purposes of federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Bank agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Bank's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Bank shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Agreement, the Issuer hereby agrees to pay to the Bank, the compensation for services rendered as provided in the annexed fee schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Bank each warrants and represents that it is duly authorized and empowered to execute and enter into this Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Berkeley County Public Service District  
P.O. Box 737  
Martinsburg, West Virginia 25402  
Attention: Chairman

REGISTRAR: Fifth Third Bank  
38 Fountain Square Plaza  
Mail Drop 10 AT60  
Cincinnati, Ohio 45263  
Attention: Corporate Trust Department

8. The Bank is hereby requested and authorized to authenticate and deliver the Series 2003 Bonds in accordance with the Bond Legislation.

9. If any one or more of the covenants or agreements provided in this Agreement to be performed on the part of any of the parties hereto shall be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

10. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their respective names and on their behalf, all as of the day and year first above-written.

BERKELEY COUNTY PUBLIC SERVICE  
DISTRICT



Chairman

FIFTH THIRD BANK



Authorized Officer

04/28/03  
067780.00002

FEE SCHEDULE

**FIFTH THIRD BANK**  
**STATEMENT OF ADMINISTRATIVE FEES**

**CORPORATE TRUST ADMINISTRATION**

BERKELELY COUNTY PUBLIC SERV 2003B

**OFFICER:** Fred Overbeck - 277

**STATEMENT DATE:** 04/29/03

**TRUSTEE, REGISTRAR, & PAYING AGENT SERVICES FOR:**

**\$2,030,000**

**BERKELEY COUNTY PUBLIC SERVICE DISTRICT  
WATER REFUNDING REVENUE BONDS  
SERIES 2003B**

ACCEPTANCE FEE:

\$1,500.00

The acceptance fee includes the initial review and consideration of the trust indenture as well as the supporting documents. This fee also includes the initial set up of trust accounts and the review of the bond authenticated and issued.

PLEASE REMIT PAYMENT TO:

ACCOUNT NUMBER:

0101001 3967205

FIFTH THIRD BANK  
38 FOUNTAIN SQUARE PLAZA  
M.D. 10AT60 - 3210  
ATTN: TAMMIE CHAMPION  
CINCINNATI, OHIO 45263





State of West Virginia  
**WATER DEVELOPMENT AUTHORITY**  
180 Association Drive, Charleston, WV 25311-1217  
(304) 558-3612 - (304) 558-0299 (Fax)  
Internet: [www.wvwda.org](http://www.wvwda.org) - Email: [contact@wvwda.org](mailto:contact@wvwda.org)

April 30, 2003

\$3,360,000

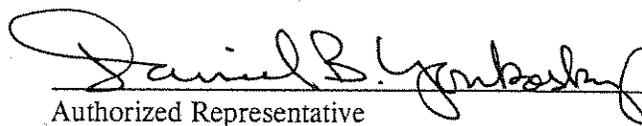
BERKELEY COUNTY PUBLIC SERVICE DISTRICT (WEST VIRGINIA)

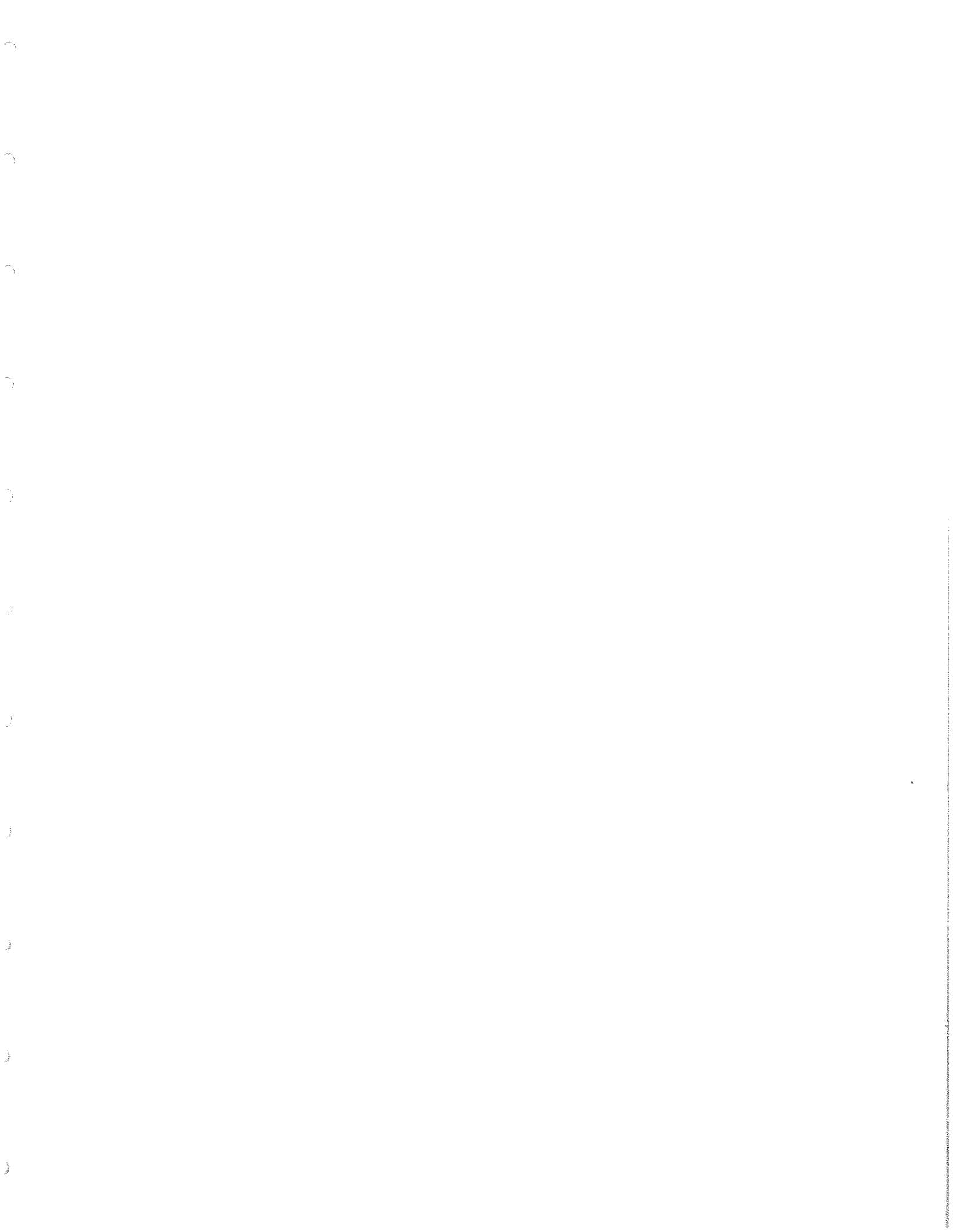
Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)  
and  
Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified)

CONSENT

In reliance upon the certificate of Cox Hollida, LLP, independent certified public accountants, the undersigned duly authorized representative of the West Virginia Water Development Authority (the "Authority"), registered owner of the Water Revenue Bonds, Series 1993 B, Water Revenue Bonds, Series 1993 D, Water Revenue Bonds, Series 1996, Water Revenue Bonds, Series 1997, and Water Revenue Bonds, Series 2001 A (collectively, the "First Lien Bonds") and the Water Revenue Bonds, Series 1993 C (the "Second Lien Bonds"), hereby consents to the issuance of the Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified) and the Water Refunding Revenue Bonds, Series 2003 B (Non-Bank Qualified) (collectively, the "Series 2003 Bonds"), in the original aggregate principal amount of \$3,360,000, by Berkeley County Public Service District (the "Issuer"), under the terms of the Resolution authorizing the Series 2003 Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's First Lien Bonds and senior and prior to the Second Lien Bonds, as set forth in the Resolution.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Authorized Representative



**Information Return for Tax-Exempt Governmental Obligations**

► Under Internal Revenue Code section 149(e)  
 ► See separate instructions.

OMB No. 1545-0720

Caution: If the issue price is under \$100,000, use Form 8038-GC.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>Berkeley County Public Service District</b>	2 Issuer's employer identification number <b>55 6008864</b>		
3 Number and street (or P.O. box if mail is not delivered to street address) <b>83 Monroe Street</b>	Room/suite	4 Report number <b>3 2003-1</b>	
5 City, town, or post office, state, and ZIP code <b>Martinsburg, West Virginia 25401</b>		6 Date of issue <b>April 30, 2003</b>	
7 Name of issue <b>Water Refunding Revenue Bonds, Series 2003 A and 2003 B</b>		8 CUSIP number <b>084246 DQ7</b>	
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Paul Fisher, Executive Director</b>		10 Telephone number of officer or legal representative <b>( 304 ) 267.3855</b>	

**Part II Type of Issue (check applicable box(es) and enter the issue price)** See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input type="checkbox"/> Environment (including sewage bonds)	15
16 <input type="checkbox"/> Housing	16
17 <input checked="" type="checkbox"/> Utilities	17 <b>3,360,561</b>
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

**Part III Description of Obligations. Complete for the entire issue for which this form is being filed.**

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	<b>09/01/2019</b>	<b>\$ 3,360,561</b>	<b>\$ 3,360,561</b>	<b>6.94047 years</b>	<b>3.84436 %</b>

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest	22	<b>8,045.89</b>
23 Issue price of entire issue (enter amount from line 21, column (b))	23	<b>3,360,561</b>
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	<b>95,575</b>
25 Proceeds used for credit enhancement	25	<b>56,704</b>
26 Proceeds allocated to reasonably required reserve or replacement fund	26	<b>319,823</b>
27 Proceeds used to currently refund prior issues	27	<b>1,058,248</b>
28 Proceeds used to advance refund prior issues	28	<b>1,830,211</b>
29 Total (add lines 24 through 28)	29	<b>3,360,561</b>
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	<b>0.00</b>

**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

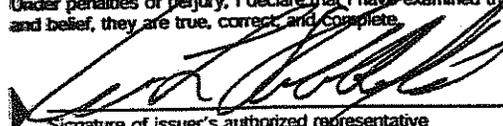
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	<b>3.38345</b>	years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	<b>9.85967</b>	years
33 Enter the last date on which the refunded bonds will be called	<b>09/01/2004</b>	
34 Enter the date(s) the refunded bonds were issued	<b>03/01/93 and 09/01/94</b>	

**Part VI Miscellaneous**

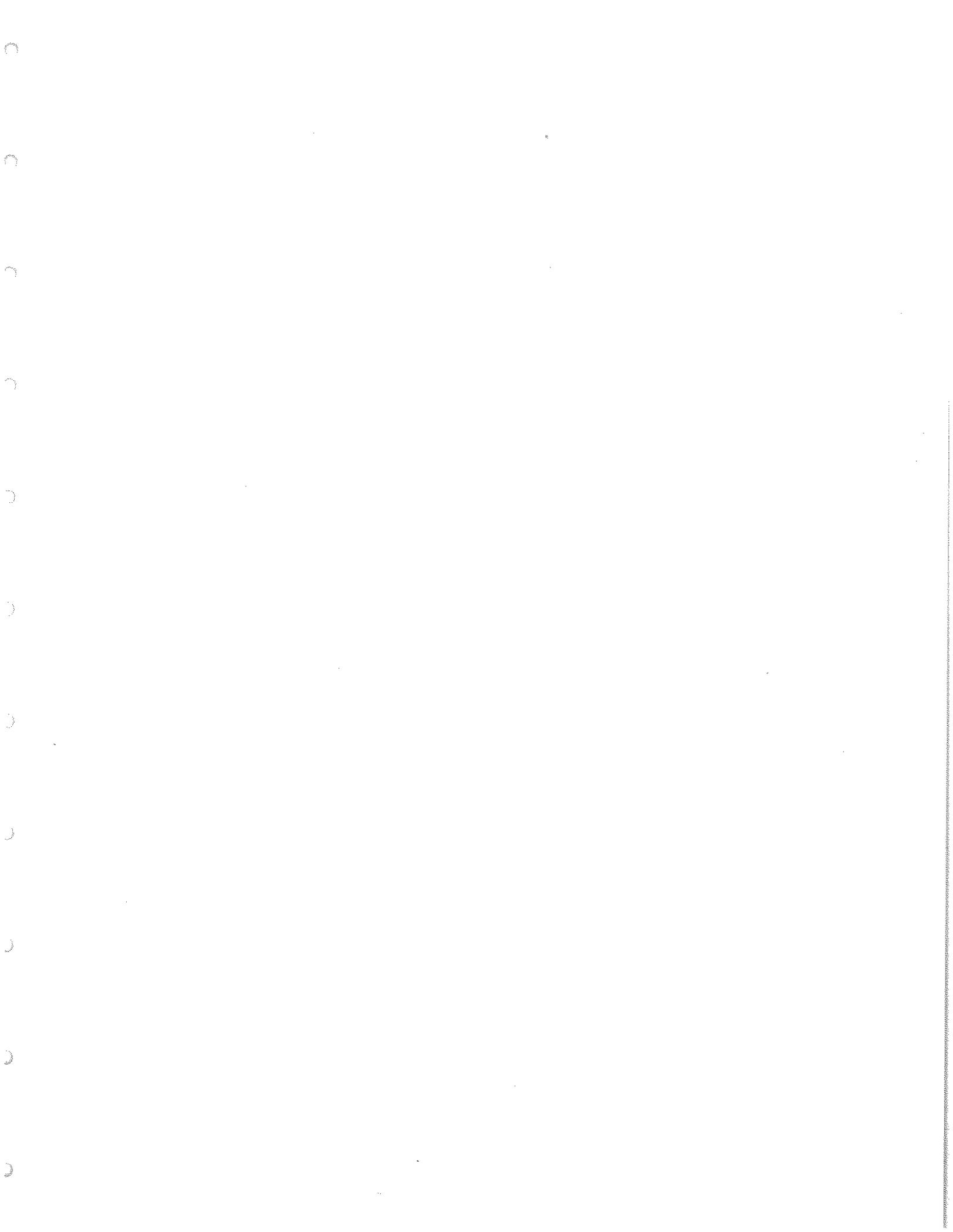
35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	<b>0.00</b>
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	<b>0.00</b>
b Enter the final maturity date of the guaranteed investment contract		<b>-0-</b>
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	<b>0.00</b>
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer	<b>N/A</b> and the date of the issue <b>N/A</b>	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input type="checkbox"/>		
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>		
40 If the issuer has identified a hedge, check box <input type="checkbox"/>		

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Sign Here**

Signature of issuer's authorized representative:  Date: \_\_\_\_\_

Type or print name and title: **William L. Stubblefield, Chairman**



WV MUNICIPAL BOND COMMISSION  
#8 Capitol Street, Suite 500  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: April 30, 2003

(See Reverse for Instructions)

ISSUE: Berkeley County Public Service District Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)

ADDRESS: P. O. Box 737, Martinsburg, West Virginia 25402

COUNTY: Berkeley

PURPOSE OF ISSUE: New Money: \_\_\_\_\_  
Refunding: X

REFUNDS ISSUE(S) DATED: March 24, 1993

ISSUE DATE: April 30, 2003

CLOSING DATE: April 30, 2003

ISSUE AMOUNT: \$1,330,000

RATE: See attached Debt Service Schedule

1ST DEBT SERVICE DUE: September 1, 2003

1ST PRINCIPAL DUE: March 1, 2004

1ST DEBT SERVICE AMOUNT: \$11,983.33

PAYING AGENT: Municipal Bond Commission

**BOND**

COUNSEL: Stephoe & Johnson PLLC  
Contact Person: Vincent A. Collins, Esq.  
Phone: (304) 624-8161

**UNDERWRITERS**

COUNSEL: Jackson Kelly PLLC  
Contact Person: Samme Gee, Esquire  
Phone: (304) 340-1318

CLOSING BANK: Fifth Third Bank  
Contact Person: Fred Overbeck  
Phone: (513) 744-6705

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

**KNOWLEDGEABLE ISSUER CONTACT**

Contact Person: Paul S. Fisher  
Position: Executive Director  
Phone: (304) 267-3855

OTHER: Ross, Sinclair & Associates  
Contact Person: Brian Nurick, Vice President  
Phone: (502) 695-7353

DEPOSITS TO MBC AT CLOSE:	_____	Accrued Interest:	\$ _____
By: _____ Wire	_____	Capitalized Interest:	\$ _____
_____ Check	_____	Reserve Account:	\$ _____
	_____	Other:	\$ _____

**REFUNDS & TRANSFERS BY MBC AT CLOSE**

By: _____ Wire	_____	To Escrow Trustee:	\$ _____
_____ Check	_____	To Issuer	\$ _____
_____ IGT	_____	To Cons. Invest. Fund	\$ _____
_____ Internal Transfer	_____	To Other:	\$ _____

NOTES: See Letter of Directions of Ross, Sinclair & Associates of April 28, 2003.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

DOCUMENTS REQUIRED: \_\_\_\_\_  
TRANSFERS REQUIRED: \_\_\_\_\_  
\_\_\_\_\_

WV MUNICIPAL BOND COMMISSION  
#8 Capitol Street, Suite 500  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: April 30, 2003

(See Reverse for Instructions)

ISSUE: Berkeley County Public Service District Water Refunding Revenue Bonds, Series 2003 A (Bank Qualified)

ADDRESS: P. O. Box 737, Martinsburg, West Virginia 25402

COUNTY: Berkeley

PURPOSE OF ISSUE: New Money: \_\_\_\_\_  
Refunding: X

REFUNDS ISSUE(S) DATED: September 1, 1994

ISSUE DATE: April 30, 2003

CLOSING DATE: April 30, 2003

ISSUE AMOUNT: \$2,030,000

RATE: See attached Debt Service Schedule

1ST DEBT SERVICE DUE: September 1, 2003

1ST PRINCIPAL DUE: September 1, 2003

1ST DEBT SERVICE AMOUNT: \$ 79,633.33

PAYING AGENT: Municipal Bond Commission

**BOND**

COUNSEL: Steptoe & Johnson PLLC  
Contact Person: Vincent A. Collins, Esq.  
Phone: (304) 624-8161

**UNDERWRITERS**

COUNSEL: Jackson Kelly PLLC  
Contact Person: Samme Gee, Esquire  
Phone: (304) 340-1318

CLOSING BANK: Fifth Third Bank  
Contact Person: Fred Overbeck  
Phone: (513) 744-6705

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT  
Contact Person: Paul S. Fisher  
Position: Executive Director  
Phone: (304) 267-3855

OTHER: Ross, Sinclair & Associates  
Contact Person: Brian Nurick, Vice President  
Phone: (502) 695-7353

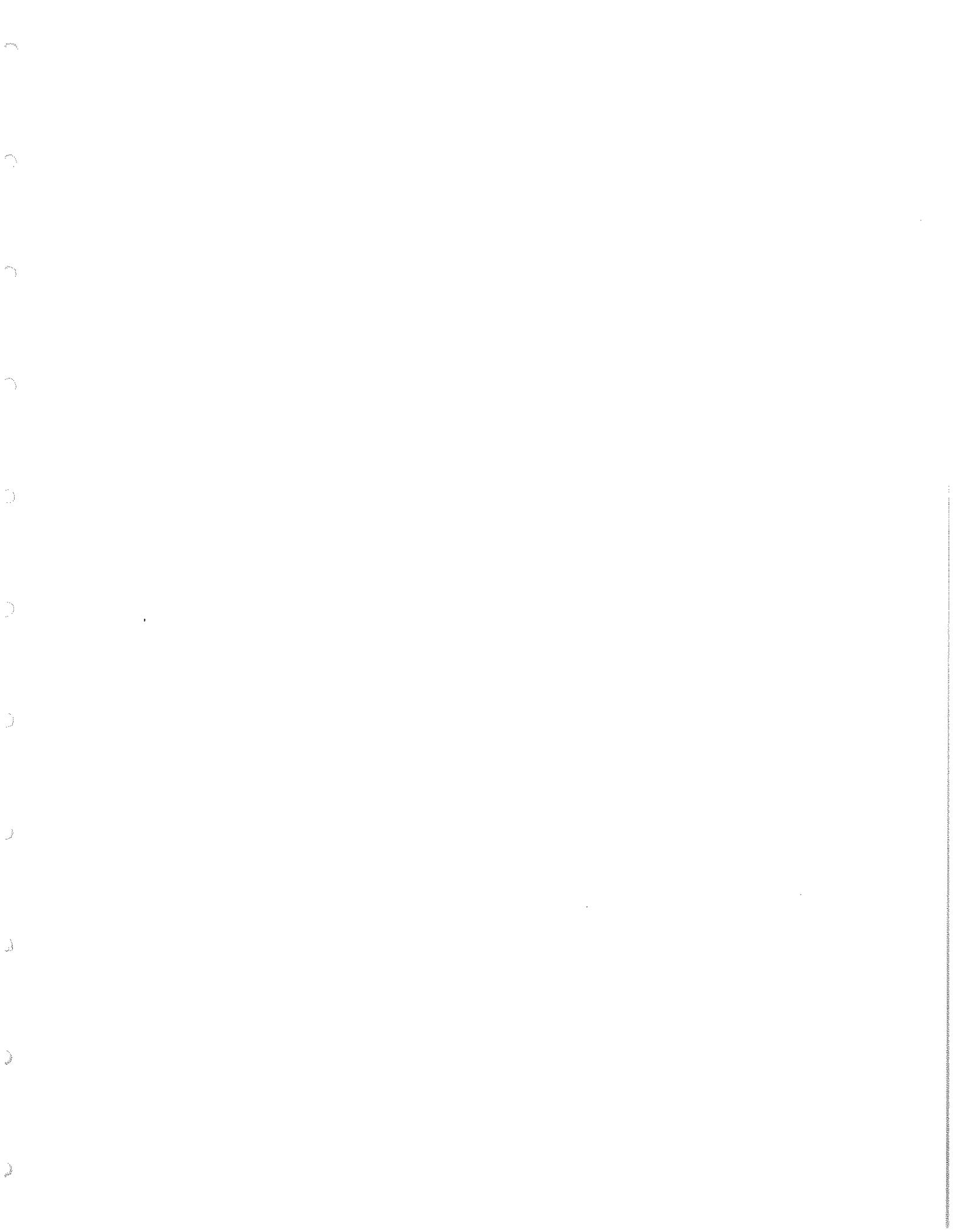
DEPOSITS TO MBC AT CLOSE:	Accrued Interest:	\$	_____
By: _____ Wire	Capitalized Interest:	\$	_____
_____ Check	Reserve Account:	\$	_____
	Other:	\$	_____

REFUNDS & TRANSFERS BY MBC AT CLOSE	To Escrow Trustee:	\$	_____
By: _____ Wire	To Issuer:	\$	_____
_____ Check	To Cons. Invest. Fund:	\$	_____
_____ IGT	To Other:	\$	_____
_____ Internal Transfer			

NOTES: See Letter of Directions of Ross, Sinclair & Associates of April 28, 2003.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

DOCUMENTS REQUIRED: \_\_\_\_\_  
TRANSFERS REQUIRED: \_\_\_\_\_  
\_\_\_\_\_



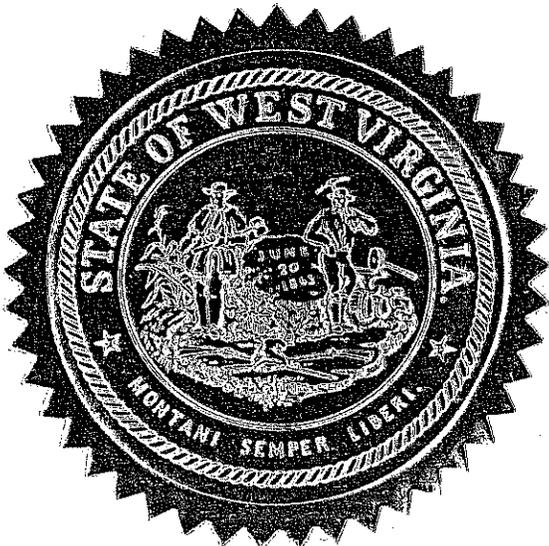
# State of West Virginia



## Certificate

*I, Joe Manchin, III, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13A, OF THE  
WEST VIRGINIA CODE, CHAPTER 16, ARTICLE 13A OF THE  
2002 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS  
INDICATED BY THE RECORDS OF THIS OFFICE.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on*

April 30, 2003

A handwritten signature in cursive script, appearing to read "Joe Manchin, III".

*By: [Signature] Secretary of State*

jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted “the” for “such” throughout, substituted “the” for “said” throughout, inserted “fees” following “rates” throughout; in the first paragraph, inserted “and/or stormwater system” following “existing sewer system”, inserted “or stormwater system” following “such sewer system”; in the second paragraph, inserted “or stormwater” following “sewage”, inserted “or

stormwater facilities” following “sewer facilities”; in the fourth paragraph, added “or entire stormwater works” to the end; in the sixth paragraph, deleted “such” following “fixing” and “publication of”; in the eighth paragraph, deleted “such” preceding “rates” twice; and in the last paragraph, added the proviso.

Applied in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

### § 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

Quoted in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

## ARTICLE 13A.

### PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.

- 16-13A-1. Legislative findings.
- 16-13A-1a. Jurisdiction of the public service commission.
- 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
- 16-13A-1c. General purpose of districts.
- 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
- 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

Sec.

- 16-13A-3a. Removal of members of public service board.
- 16-13A-4. Board chairman; members' compensation; procedure; district name.
- 16-13A-5. General manager of board.
- 16-13A-6. Employees of board.
- 16-13A-7. Acquisition and operation of district properties.
- 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- 16-13A-9a. Limitations with respect to foreclosure.

- Sec.  
 16-13A-10. Budget.  
 16-13A-11. Accounts; audit.  
 16-13A-12. Disbursement of district funds.  
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 16-13A-19. Statutory mortgage lien created; foreclosure thereof.  
 16-13A-20. Refunding revenue bonds.  
 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.  
 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.  
 16-13A-23. Validation of acts and proceedings of public service boards.  
 16-13A-24. Acceptance of loans, grants or temporary advances.  
 16-13A-25. Borrowing and bond issuance; procedure.

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**Constitutionality.** — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Purpose.** — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Public utilities.** — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Att'y Gen. 447 (1963).

Cited in *Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987); *McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist.*, 199 W. Va. 490, 485 S.E.2d 434 (1997).

## § 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)

**Authority of county commissions.** — The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provisions of this article. Op. Att'y Gen., June 27, 1973.

**Public service district — Authority.** — A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa

Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Public service district — Purpose.** — The purpose for the creation of a public service district may be ascertained by a review of the order establishing the district and the history behind the creation of the district (the notice of hearing and hearings held prior to the creation of the district). Op. Att'y Gen., July 8, 1976.

Cited in State ex rel. APCO v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965); Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979).

### § 16-13A-1a. Jurisdiction of the public service commission.

The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b [§ 16-13A-1b] of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters. (1986, c. 81.)

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

**§ 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.**

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

**§ 16-13A-1c. General purpose of districts.**

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or

other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

**§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.**

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) on its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county

commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and

extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b] of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive,

all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125.)

**Editor's notes.** — Concerning the reference in (a) to "the effective date of this section," this language was added by Acts 1986, c. 81, and became effective June 6, 1986.

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**Constitutionality.** — There is no unlawful delegation of legislative power to the county courts (now county commissions) of this State under this section in violation of W. Va. Const., art. V, § 1, and art. VI, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

There is no unconstitutional delegation of judicial functions to the county court (now county commission) made by this section. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Authority of commission and voters.** — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and, that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlargement or reduction of such public service district, which action is not subject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and

public referendum depending upon the number of qualified voters who protest such action. Op. Att'y Gen., Nov. 13, 1975.

**Authority of court.** — A county court (now county commission) has authority to add sewerage services to the facilities of a public service district which was created for the purpose of furnishing water services, under appropriate proceedings. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Compliance.** — The provisions of this section relating to the filing of the petition or motion of the county court (now county commission), the description of the territory to be embraced and like provisions are mandatory, but the use of the word "shall," in relation to the requirements for the posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Merger or consolidation of districts.** — This section authorizes either merger or consolidation of public service districts. Op. Att'y Gen., June 12, 1985, No. 9.

A merger or consolidation results in one corporation which, in the case of merger, will be the corporation designated by the commissioners as the surviving corporation, and with respect to a consolidation, will be a new corporate entity. Op. Att'y Gen., June 12, 1985, No. 9.

**Overlapping districts.** — Where there is no bond indebtedness outstanding to be paid by a public service district, the county commission creating a public service district may undertake to enlarge or reduce the areas of various overlapping districts or may even consolidate the overlapping districts into one district. Op. Att'y Gen., July 8, 1976.

**Public corporation.** — A public service

district is a public corporation and does not come within the constitutional inhibition requiring all corporations to be created by general law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Referendum.** — There is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service district should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

**"Shall apply with like effect," etc.** — Because a protest against creation triggers a

referendum, the language "shall apply with like effect as if a district were being created" can mean only that a protest against enlargement or reduction likewise triggers a referendum. Op. Att'y Gen., Nov. 13, 1975.

**Applied in Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n**, 204 W. Va. 279, 512 S.E.2d 201 (1998).

**Cited in State v. Neary**, 179 W. Va. 115, 365 S.E.2d 395 (1987).

### § 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is

entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office. Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159.)

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**W. Va. Law Review.** — Fisher, "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?," 98 W. Va. L. Rev. 449 (1996).

**Authority of districts.** — Public service

districts are agents of the county commission by which they were created, having no authority other than that expressly set out in this article. Op. Att'y Gen., July 8, 1976.

**Compensation for additional duties.** — Board members of a public service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading

meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

**Exemptions.** — Public service districts of West Virginia are political subdivisions of the State, and as such, they are specifically, by express statute, exempted from the duty of paying registration fees (provided by § 17A-10-8), the privilege tax (imposed by § 17A-3-4), and the certificate of title charge (required by § 17A-3-4). 49 Op. Att'y Gen. 131 (1961).

**Furnishing water to another state.** — A public service district may furnish water wholesale in bulk quantities to a municipal corporation in another state. 51 Op. Att'y Gen. 739 (1966).

**Applied in** *McCloud v. Salt Rock Water Pub. Serv. Dist.*, 207 W. Va. 453, 533 S.E.2d 679 (2000).

**Cited in** *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

### § 16-13A-3a. Removal of members of public service board.

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal. (1963, c. 75; 1971, c. 72; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**Quoted in** *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

### § 16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per

attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings

may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and the change is effective from the filing of an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81; 1997, c. 159; 2000, c. 199.)

**Effect of amendment of 2000.** — Acts 2000, c. 199, effective June 9, 2000, rewrote the section.

**Compensation for performing additional duties.** — Board members of a public

service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

#### § 16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

**§ 16-13A-6. Employees of board.**

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees. (1953, c. 147; 1981, c. 124.)

**§ 16-13A-7. Acquisition and operation of district properties.**

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [ §§ 59-3-1 et seq. ], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [ § 16-13A-2 ] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159.)

**§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.**

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits

of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124.)

**Eminent domain.** — The grant of power of eminent domain to public service districts by this section is valid. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

If a facility creates a nuisance this harm is simply an element of just compensation in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Public service commission, in the absence of specific statutory authority, is not empowered to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Superior right of municipality to extend**

**public services.** — If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right under this section to extend public services, such as water and/or sewer service, which were not being previously furnished to the tract by the public service district. *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

**When consent of municipality needed.** — Where municipality has superior right to extend social services, a public service district would need the consent of the municipality and the public service commission in order to provide such services. *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

Cited in 45 Op. Att'y Gen. 506 (1953).

### § 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall

deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be

transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine (§ 16-1-9), article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the

normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61.)

**W. Va. Law Review.** — Fisher, "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?," 98 W. Va. L. Rev. 449 (1996).

**Abandonment of private systems.** — Where a public service district requires a property owner, tenant, or occupant to connect onto its sewer system and to abandon a private sewer system located on the property, such person cannot recover from the public service district the value of the private system on the ground that such abandonment constitutes a taking of private property without just compensation within the meaning of W. Va. Const., art. III, § 9. *Kingmill Valley Pub. Serv. Dist. v. Riverview Estates Mobile Home Park*, 182 W. Va. 116, 386 S.E.2d 483 (1989).

**Buffer-zone requirements.** — Public Service Commission did not err in finding that the proposed sewage lagoons site satisfied the buffer-zone requirements. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Duty to pay.** — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. *Rhodes v. Malden Pub. Serv. Dist.*,

171 W. Va. 645, 301 S.E.2d 601 (1983) (construing this section prior to 1980 and 1981 amendments).

**Liens.** — The provision that delinquent fixed rates and charges for services rendered by a public service district shall be a lien on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes, does not deprive the owners of their property without due process of law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public service district liens created and enforceable under this section are subject to the recordation requirements of § 38-10C-1 so that such liens must be docketed to be enforceable against a purchaser of the property for valuable consideration, without notice. *McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist.*, 199 W. Va. 490, 485 S.E.2d 434 (1997).

**Sewer connection requirements.** — The boards of public service districts have no authority to require potential users who live outside the boundaries of the districts, but within the 10-mile limit, to hook onto the district's sewer facilities. *Op. Att'y Gen.*, July 8, 1976.

**Quoted in** *State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist.*, 195 W. Va. 135, 464 S.E.2d 777 (1995).

### § 16-13A-9a. Limitations with respect to foreclosure.

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen [§§ 16-13A-9 or 16-13A-19] of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1982, c. 74.)

**§ 16-13A-10. Budget.**

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board. (1953, c. 147; 1981, c. 124.)

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**§ 16-13A-11. Accounts; audit.**

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit may be any audit by an independent public accountant completed within one year of the time required for the submission of the report: Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine [ §§ 6-9-1 et seq. ], chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

*Textbooks.* — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

### § 16-13A-12. Disbursement of district funds.

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board. (1953, c. 147; 1981, c. 124.)

### § 16-13A-13. Revenue bonds.

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolu-

tion or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

**Cross references.** — Procedure for borrowing and issuing bonds, § 16-13A-25.

#### **§ 16-13A-14. Items included in cost of properties.**

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147.)

#### **§ 16-13A-15. Bonds may be secured by trust indenture.**

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or

nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

**§ 16-13A-16. Sinking fund for revenue bonds.**

At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions. (1953, c. 147.)

**§ 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.**

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall

direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to writ of mandamus, see Rule 81(a)(5).

As to effect of rules on jurisdiction and venue, see Rule 82.

**Mandamus.** — Mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to require a municipal corporation to comply with rate covenants in its rev-

enue bonds. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

Under this section, any holder of the bonds of the Union public service district shall have the right by mandamus to enforce and compel the performance of all the duties required by statute or undertaken by the district in connection with the issuance of bonds by such district. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

### § 16-13A-18. Operating contracts.

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1953, c. 147.)

### § 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately-owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commis-

sions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160.)

### § 16-13A-19. Statutory mortgage lien created; foreclosure thereof.

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

holders a statutory mortgage lien is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**In general.** — The provision granting bond-

### § 16-13A-20. Refunding revenue bonds.

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded. (1953, c. 147.)

**In general.** — The only purpose for refunding bonds is the retirement or refinancing of outstanding bond issues of a particular district. Op. Att'y Gen., July 8, 1976.

the use of the singular language in this section. Op. Att'y Gen., July 8, 1976.

**Previous issuance of bonds.** — This section is clearly written in language which speaks only of refunding bonds issued by any district which has previously issued bonds. Op. Att'y Gen., July 8, 1976.

**Combination of bond issues.** — Combination of two outstanding bond issues into one refunding bond issue may well be restricted by

**§ 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.**

This article is full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article. Provided, That all functions, powers and duties of the public service commission of West Virginia, the bureau of public health, the division of environmental protection and the environmental quality board remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it are exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent. (1953, c. 147; 1986, c. 81; 1994, c. 61.)

**Constitutionality.** — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art. X, § 1. State ex rel. McMillion v. Stahl, 141 W.

Va. 233, 89 S.E.2d 693 (1955).

Applied in Rhodes v. Malden Pub. Serv. Dist, 171 W. Va. 645, 301 S.E.2d 601 (1983).

**§ 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.**

All acts and proceedings taken by any county court [county commission] of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city,

incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

**Editor's notes.** — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

Concerning the reference to "the date this section takes effect", Acts 1958, c. 14, which

enacted this section and included this language, became effective February 1, 1958. Acts 1960, c. 19, which amended this section, provided that the act take effect January 29, 1960.

### § 16-13A-23. Validation of acts and proceedings of public service boards.

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect, by any county court [county commission] of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

**Editor's notes.** — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

Concerning the reference to "the date this

section takes effect", Acts 1965, c. 134, which amended this section, provided that the act take effect March 13, 1965.

### § 16-13A-24. Acceptance of loans, grants or temporary advances.

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this

article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118.)

**Permissible borrowing.** — The borrowing by public service districts of money from counties and/or municipalities, as evidenced by a note, is permissible borrowing under this section. Op. Att'y Gen., May 6, 1988, No. 27.

### § 16-13A-25. Borrowing and bond issuance; procedure.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four [§ 16-13A-13, § 16-13A-20 or § 16-13A-24] of this article, without the prior consent and approval of the public service commission. The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, evidence of compliance with chapter five-g [§§ 5G-1-1 et seq.] of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm in the past two years requiring engineering services; or (2) completion of a construction project within the past two years requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall prefile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159.)

**Cross references.** — Class II legal advertisement defined, § 59-3-2.

**Certificate.** — Under this section, a public service district must first obtain a certificate of public convenience and necessity before it can acquire or construct public service property. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Eminent domain.** — Although construction

of a new facility proposed by a utility will often require the taking of private property through eminent domain, in the absence of express statutory language, the public service commission has no duty to review and decide issues that are inherent in the eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

## ARTICLE 13B.

### COMMUNITY IMPROVEMENT ACT.

Sec.	Sec.
16-13B-1. Short title.	
16-13B-2. Definitions.	
16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.	
16-13B-4. Determination of need and feasibility of creating an assessment district.	
16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.	
16-13B-6. Petition of property owners for creation of assessment district.	
16-13B-7. Receipt of petition of property owners; ordinance or order authorizing creation of assessment district and construction of project.	
	16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.
	16-13B-9. Provisions for construction of a project.
	16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits.
	16-13B-11. Construction of projects; assessments; corner lots, etc.
	16-13B-12. Apportionment and assessment of cost.

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## ARTICLE 9A.

## TOBACCO USAGE RESTRICTIONS.

**§ 16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.**

Code of State Rules References. — Tobacco control (2422.5a), 126 CSR66, effective May 13, 1998.

**§ 16-9A-8. Selling of tobacco products in vending machines prohibited except in certain places.**

Code of State Rules References. — Prohibiting sale of tobacco products in vending machines, 175 CSR9, effective June 1, 2001.

## ARTICLE 13A.

## PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

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| <p>Sec.<br/>16-13A-1c. General purpose of districts.<br/>16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.<br/>16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.<br/>16-13A-5. General manager of board.<br/>16-13A-7. Acquisition and operation of district properties.</p> | <p>Sec.<br/>16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.<br/>16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.<br/>16-13A-14. Items included in cost of properties.<br/>16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.<br/>16-13A-24. Acceptance of loans, grants or temporary advances.</p> |
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**§ 16-13A-1. Legislative findings.**

Code of State Rules References. — Government of public service districts, 150 CSR17, effective September 1, 1990.

**§ 16-13A-1c. General purpose of districts.**

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of,

properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with: (1) The diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"); (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills"); (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs"). As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways. (1986, c. 81; 2002, c. 272.)

**Effect of amendment of 2002.** — Acts 2002, c. 272, effective June 7, 2002, inserted "or stormwater" following sewerage" in the first

sentence; added subdivisions (4) and (5); added the last two sentences; and made minor stylistic changes.

**§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.**

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) On its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services, stormwater services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or

consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b], of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated

pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125; 2002, c. 272.)

Effect of amendment of 2002. — Acts (1), and inserted "stormwater services" near the 2002, c. 272, effective June 7, 2002, in (a), middle of the last sentence. capitalized "On" at the beginning of subdivision

**§ 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.**

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing stormwater services for the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor

shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this

article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "or for furnishing stormwater services for the city, town or other municipal corporation" in the second sentence of the first paragraph.

### § 16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his or her successor is employed, and his or her compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his or her time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he or she shall perform and exercise such other powers and duties as may be conferred upon him or her by the board.

Such general manager shall be chosen without regard to his or her political affiliations and upon the sole basis of his or her administrative and technical qualifications to manage public service properties and affairs of the district and he or she may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he or she is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water, sewer or stormwater service from a municipal water, sewer or stormwater system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water, sewer or stormwater system or public service district from which such water, sewer or stormwater service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "or stormwater" following "sewer" four times in the third paragraph, and made minor stylistic changes.

### § 16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [ §§ 59-3-1 et seq. ], chapter fifty-nine of this code, and the publication area for such publication shall be as

specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, added "including, but not limited to, those activities

necessary to comply with all federal and state requirements, including water quality improvement activities" to the end of the first sentence.

**§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.**

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities, stormwater facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or

other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities, a stormwater system, stormwater management program or gas facilities for water, sewer, stormwater or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways: Provided, however, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, in the second paragraph, inserted "stormwater facilities" following "sewer facilities" in the proviso; in the third paragraph, inserted "a stormwater

system, stormwater management program" following "sewer facilities" and "stormwater" preceding "or gas services"; in the last paragraph, added a new first proviso and redesignated the former first proviso as the second.

**§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, mainte-

nance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates, fees and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates, fees and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, fees, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine [§ 16-1-9], article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all

reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

Whenever any district has made available a stormwater system to any owner, tenant or occupant of any real property located near such stormwater system, and where stormwater from such real property affects or drains into such stormwater system, it is hereby found, determined and declared that such owner, tenant or occupant is being served by such stormwater system, and it is further hereby found, determined and declared that the mandatory use of such stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of such district and of the state. The district may charge, and such owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, stormwater systems or stormwater management systems or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by

section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61; 2002, c. 272.)

**Code of State Rules References.** — Rules and regulations for the government of gas utilities and gas pipeline safety, 150 CSR 4, effective July 21, 1996.

Rules and regulations for the government of sewer utilities, 150 CSR 5, effective January 2, 1996.

Rules and regulations for the government of telephone utilities, 150 CSR 6, effective October 10, 2000.

Rules and regulations for the government of water utilities, 150 CSR 7, effective February 5, 1996.

**Effect of amendment of 2002.** — Acts

2002, c. 272, effective June 7, 2002, inserted "fees" following "rates" throughout the section; in the first paragraph, deleted "and regulations" following "needful rules" in the first sentence, inserted a new third sentence, substituted "Where water, sewer, stormwater or gas services, or any combination thereof" for "Where water, sewer and gas services" in the present fourth sentence; inserted the fifth paragraph; in the present sixth paragraph, inserted "stormwater systems or stormwater management systems" following "sewer facilities" and "stormwater" preceding "or gas bills" in the first sentence.

#### § 16-13A-14. Items included in cost of properties.

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147; 2002, c. 272.)

**Effect of amendment of 2002.** — Acts 2002, c. 272, effective June 7, 2002, inserted "for stormwater systems ... federal and state requirements" following the first phrase.

#### § 16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any

municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160; 2002, c. 272.)

**Effect of amendment of 2002.** — Acts 2002, c. 272, effective June 7, 2002, inserted "stormwater" following "sewer" in the section heading and throughout the section.

#### **§ 16-13A-24. Acceptance of loans, grants or temporary advances.**

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems, stormwater systems or stormwater management systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system, stormwater system or associated stormwater management system or gas facilities, or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or

from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted “stormwater systems or stormwater management systems” and “stormwater system or associated stormwater management system”.

### ARTICLE 13C.

#### DRINKING WATER TREATMENT REVOLVING FUND ACT.

#### § 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.

Code of State Rules References. — Drinking water treatment revolving fund, 64 CSR 49, effective June 1, 1998. Public water systems capacity development, 64 CSR 61, effective May 14, 1999.

### ARTICLE 19.

#### ANATOMICAL GIFT ACT.

Sec.

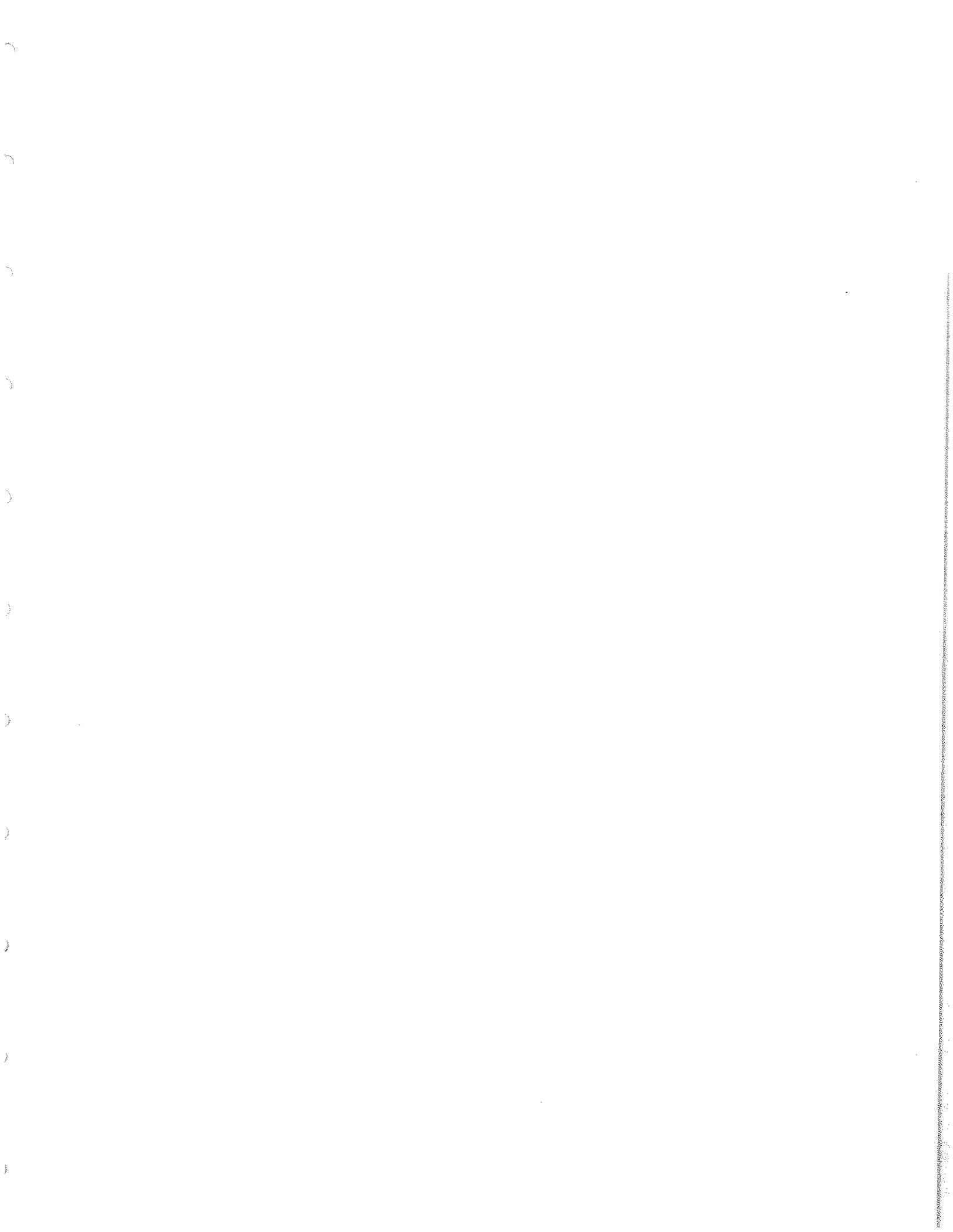
16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.

#### § 16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.

(a) An individual who is at least eighteen years of age may:

- (1) Make an anatomical gift for any of the purposes stated in subsection (a), section six [16-19-6] of this article;
- (2) Limit an anatomical gift to one or more of those purposes; or
- (3) Refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor is unable to sign a document of gift and intends to make an anatomical gift, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.



# M E M O R A N D U M

## VIA FACSIMILE

**To:** Melissa Seidt, Closing Coordinator  
Ross, Sinclair & Associates, Inc.  
**From:** Brian Nurick  
**Date:** April 29, 2003  
**Subject:** Berkeley County Public Service Water Refunding Revenue Bonds, Series 2003A and B  
**Cc:** John Stump, Esq. (304-353-8181); Yolanda Ortiz (212-2083404); Mary Beth Shellehamer (717-627-2854)

In order to expedite the payment of the insurance premium to AMBAC, we have revised the wiring instructions of the Underwriter as follows:

**Wire #1 - Paying/Escrow Agent**  
**\$3,217,790.10**

West Virginia Municipal Bond Commission  
Branch Banking and Trust Company,  
Charleston, West Virginia  
ABA# 051503394  
Acct# 5270517317  
Contact: Sara Boardman  
Telephone: 304-558-3971

**Wire #2 - Credit Enhancement Provider**  
**\$56,704.44**

Ambac Assurance Corporation  
Citibank N.A.  
ABA# 021000089  
Acct# 40609486  
Contact: Yolanda Ortiz  
Telephone: 212-208-3553

**Wire #3 - Cost of Issuance Bank**  
**\$35,312.50**

Farmers & Merchants Bank & Trust  
ABA# 055000259  
Account# 11006205  
Contact: Mary Beth  
Telephone: 866-350-9473

Should you have any questions please feel free to contact me at 800-255-0795. -Brian Nurick

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Frankfort, KY 40601  
502-695-7353  
Fax: 502-695-2897