

BIRCH RIVER PUBLIC SERVICE DISTRICT

**Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)**

BOND TRANSCRIPT

Closing Date: October 19, 2009

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BIRCH RIVER PUBLIC SERVICE DISTRICT

**Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)**

BOND RESOLUTION

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BIRCH RIVER PUBLIC SERVICE DISTRICT

RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BIRCH RIVER PUBLIC SERVICE DISTRICT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$630,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF BIRCH RIVER PUBLIC SERVICE DISTRICT:

ARTICLE I

**STATUTORY AUTHORITY, FINDINGS
AND DEFINITIONS**

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. Birch River Public Service District (the "Issuer") is a public corporation, public service district and political subdivision of the State of West Virginia in Nicholas and Clay Counties of said State, duly created pursuant to the Act by The County Commission of Nicholas.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer currently owns and operates a public waterworks system and desires to finance and acquire, construct, operate and maintain certain additional public service properties consisting of additions, improvements and extensions to such existing waterworks facilities with all appurtenant facilities, within the boundaries of the Issuer to be owned and operated by the Issuer.

B. 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 constructed and designed certain additions, improvements and extensions to the existing waterworks facilities of the Issuer, consisting construction of extension of the existing water distribution

system (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. The existing waterworks facilities of the Issuer, together with the Project and any further additions, improvements or extensions thereto, are herein called the "System." The design 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.

C. 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 costs of operation and maintenance of the System, the principal of and interest on the Bonds (hereinafter defined) and all funds and accounts and other payments provided for herein.

D. The estimated maximum cost of the Project is \$5,034,888 of which \$630,000 will be obtained from the proceeds of sale of the Series 2009 A Bonds, herein authorized, \$1,352,076 will be obtained as a grant from the Purchaser and approximately \$3,052,812 will be obtained from an Abandoned Mine Lands grant.

E. It is necessary for the Issuer to issue its Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the aggregate principal amount of \$630,000 (the "Series 2009 A Bonds"), to permanently finance a portion of the cost of such acquisition and construction in the manner herein provided. The cost of such acquisition and construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Series 2009 A Bonds prior to, during and for six months after completion of such design of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and other expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized; provided that, reimbursement to the Issuer for any amounts expended by it for the repayment of indebtedness incurred for costs of the Project by the Issuer shall be deemed costs of the Project.

F. The period of usefulness of the System after completion of the Project is not less than 40 years.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge and source of and security for payment being the Issuer's Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds"). Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which rank prior to or on a parity with the Series 2009 A Bonds as to liens, pledge and/or source of and security for payment.

The Issuer is not in default under the terms of the Prior Bonds, or the resolutions authorizing issuance of the Prior Bonds or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of parity bonds or has obtained a sufficient and valid consent or waiver thereof.

H. It is in the best interest of the Issuer that the Series 2009 A Bonds be sold to the Purchaser, pursuant to the terms and provisions of the Letters of Conditions, dated June 15, 2007, and all amendments thereto, if any (collectively, the "Letter of Conditions").

I. 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 2009 A Bonds, or will have so complied prior to issuance of the Series 2009 A Bonds, including, among other things and without limitation, obtaining a certificate of public convenience and necessity and approval of the financing and necessary user rates and charges from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 A Bonds by those who shall be the Registered Owner of the same from time to time, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Series 2009 A Bonds.

Section 1.04. Definitions. In addition to capitalized terms defined elsewhere herein, the following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Chapter 16, Article 13A of the West Virginia Code of 1931, as amended.

"Bond Legislation" means this Resolution and all resolutions supplemental hereto and amendatory hereof.

"Bond Registrar" means the Issuer, which shall usually so act by its Secretary.

"Bonds" means, collectively, the Series 2009 A Bonds and the Prior Bonds.

"Chairman" means the Chairman of the Governing Body.

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

"Consulting Engineer" means E.L. Robinson Engineering Company, Beckley, West 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" or "Costs of the Project" means those costs described in Section 1.02 (F) hereof.

“Depository Bank” means United Bank, Inc., Summersville, West Virginia, a bank or trust company which is a member of FDIC (herein defined), and its successors and assigns.

“Facilities” or “waterworks facilities” means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

“FDIC” means the Federal Deposit Insurance Corporation.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Public Service Board of the Issuer.

“Government Obligations” means direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America.

“Grants” means, collectively, all grants committed for the Project.

“Herein” or “herein” means in this Bond Legislation.

“Issuer,” “Borrower” or “District” means Birch River Public Service District, a public service district, a public corporation and a political subdivision of the State of West Virginia, in Nicholas and Clay Counties, West Virginia, and includes the Governing Body.

“Letter of Conditions” means, collectively, the Letter of Conditions of the Purchaser dated June 15, 2007, and all amendments thereto, if any.

“Minimum Reserve” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

“Net Revenues” means the balance of the Gross Revenues, as defined below, remaining after deduction of Operating Expenses, as defined below.

“Operating Expenses” means the current expenses, paid or accrued, of operation and maintenance of the Project and the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the Project and the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed one-sixth of the budgeted Operating Expenses stated above for the current year as working capital, and language herein requiring payment of Operating Expenses means also retention of not to exceed such sum as working capital; provided that, all monthly amortization

payments upon the Bonds and into all funds and accounts have been made to the last monthly payment date prior to the date of such retention.

“Prior Bonds” means the Series 1998 Bonds.

“Prior Resolution” means, collectively, the resolutions of the Issuer, respectively, adopted authorizing the issuance of the Prior Bonds.

“Project” shall have the meaning stated in Section 1.02B above.

“Purchaser” or “Government” means United States Department of Agriculture, Rural Utilities Service, and any successor thereof, acting for and on behalf of the United States of America.

“Qualified Investments” means and includes any of the following, to the extent such investments are permitted by law:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC (hereinbefore defined) or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged

either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service or Standard & Poor's Corporation.

"Registered Owners," "Bondholders," "Holders of the Bonds" or any similar term means any person who shall be the registered owner of the Bonds.

"Resolutions" means, collectively, the Prior Resolutions and the Bond Legislation.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

“Series 1998 Bonds” means the Issuer’s Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000.

“Series 2009 A Bonds” means the Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), authorized hereby to be issued pursuant to this Bond Legislation.

“Series 2009 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

“System” means the complete public waterworks system of the Issuer, presently existing in its entirety or any integral part thereof, and shall include the Project and any improvements and extensions thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neuter gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Chairman or the Secretary shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

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 and ordered the acquisition and construction of the Project, at an estimated cost of \$5,034,888, 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 estimated maximum cost of the Project is \$5,034,888 of which \$630,000 will be obtained from the proceeds of sale of the Series 2009 A Bonds, herein authorized, \$1,352,076 will be obtained as a grant from the Purchaser and approximately \$3,052,812 will be obtained from an Abandoned Mine Lands grant.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions of the Bond Legislation, the Series 2009 A Bonds of the Issuer, to be known as "Water Revenue Bonds, Series 2009 A (United States Department of Agriculture)", are hereby authorized to be issued in the aggregate principal amount of \$630,000, for the purpose of (i) financing a portion of the cost of the acquisition and construction of the Project, and (ii) paying certain costs of issuance and related costs not otherwise provided for.

Section 3.02. Description of Bonds. The Series 2009 A Bonds shall be issued in single form, numbered AR-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The Series 2009 A Bonds shall bear interest from the date of delivery, payable monthly at the rate of 4.125% per annum, and shall be sold for the par value thereof. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$2,741, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond.

The Series 2009 A Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the respective Bond forms hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Series 2009 A Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2009 A Bonds, and the right to principal of and stated interest on the Series 2009 A Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Series 2009 A Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2009 A Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Series 2009 A Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2009 A Bonds.

Section 3.04. Bond Registrar. The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, sufficient books for the registration and transfer of the Series 2009 A Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2009 A Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2009 A Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2009 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2009 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2009 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Execution of Bonds. The Series 2009 A Bonds shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2009 A Bonds shall cease to be such officer of the Issuer before the Series 2009 A 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. The Series 2009 A 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 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2009 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds or in lieu of and substitution for the Bonds destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2009 A Bonds so surrendered shall be canceled and held for the account of the Issuer. If the Series 2009 A Bonds shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2009 A Bonds shall be secured forthwith by a first lien on the Net Revenues derived from the System, on a parity with the Prior Bonds. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series 2009 A Bonds and the Prior Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2009 A Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bond. Subject to the provisions hereof, the text of the Series 2009 A Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$630,000

No. AR-1

Date: _____

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of _____ (\$630,000), plus interest on the unpaid principal balance at the rate of _____% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer, and (ii) to pay costs of issuance and related costs.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolutions and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, 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 only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"), and a Resolution of the Borrower duly adopted _____, 2009, authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY, AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, WITH THE BORROWER'S WATER REVENUE BONDS, SERIES 1998 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 5, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$434,000 (THE "SERIES 1998 BONDS" OR "PRIOR BONDS").

In accordance with the requirements of the United States Department of Agriculture, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Chairman:

P.O. Box 218
(P.O. Box No. or Street Address)

Birch River, West Virginia 26610
(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Secretary:

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, 20____.

In the presence of:

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. A. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if established by Prior Resolution) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund (established by Prior Resolution);
- (2) Reserve Fund (established by Prior Resolution for the Series 1998 Bonds);
- (3) Renewal and Replacement Fund (established by Prior Resolution as "Depreciation Reserve" and hereby renamed); and
- (4) Series 2009 A Bonds Project Construction Account.

B. Establishment of Funds and Accounts with Commission. The following special funds or accounts are created (or continued if established by Prior Resolution) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and from each other:

- (2) Series 2009 A Bonds Reserve Account.

Section 4.02. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Series 2009 A Bonds shall be deposited upon receipt by the Issuer in the Series 2009 A Bonds Project Construction Account. The monies in the Series 2009 A Bonds Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Monies in the Series 2009 A Bonds Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Monies in the Series 2009 A Bonds Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Series 2009 A Bonds Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Series 2009 A Bonds if there are not sufficient Net Revenues to make such monthly payment.

Pending application as provided in this Section 4.02, money and funds in the Series 2009 A Bonds Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Series 2009 A Bonds Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.03. Covenants of the Issuer as to System Revenues and Funds. So long as any of the Series 2009 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2009 A Bonds Reserve Account, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2009 Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the Holders of the Series 2009 A Bonds as follows:

A. **REVENUE FUND.** The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Resolutions and 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 the Resolutions.

B. **DISPOSITION OF REVENUES.** All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority, subject to the provisions of the Prior Resolutions not otherwise modified herein:

(1) The Issuer shall first, each month, pay from the Revenue Fund the Operating Expenses of the System.

(2) The Issuer shall next, each month, on or before the due date thereof, transfer from the Revenue Fund and simultaneously remit (i) to the National Finance Office the amount required by the Prior Resolutions to pay the interest on the Prior Bonds; and (ii) to the National Finance Office the amount required to pay interest on the Series 2009 A Bonds.

(3) The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously, on or before the due date thereof, remit (i) to the National Finance Office the amount required by the Prior Resolutions to pay the principal of the Prior Bonds; and (ii) remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2009 A Bonds, the amount required to amortize the principal of the Series 2009 A Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Depository

Bank the amounts required by the Prior Resolutions to be deposited in the Reserve Account for the Prior Bonds; and (ii) beginning on the date specified by the purchaser, but in any event not later than the 24th monthly anniversary of the Closing Date, and continuing on each monthly anniversary of the Closing Date thereafter, transfer from the Revenue Fund and remit to the Commission, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 10% of the monthly payment amount, until the amount in the Series 2009 A Bonds Reserve Account equals the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Accounts (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Whenever the money in the Series 2009 A Bonds Reserve Account shall be sufficient to prepay the Series 2009 A Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2009 A Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Commission is hereby designated as the Fiscal Agent for the administration of the Series 2009 A Bonds Reserve Account. All amounts required for the Series 2009 A Bonds Reserve Account will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

The Revenue Fund shall constitute a Trust Fund and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2009 A Bonds and the interest thereon, on a parity with the Prior Bonds.

The Series 2009 A Bonds Reserve Account shall constitute a trust fund and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2009 A Bonds and the interest thereon.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2009 A Bonds and the Prior Bonds, in accordance with the respective principal amounts then Outstanding.

Subject to the Prior Resolutions, the Commission shall keep the monies in the Series 2009 A Bonds Reserve Account invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia Board of Treasury Investments. 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 interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings from monies in the Series 2009 A Bonds Reserve Account, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually by the Commission to the Issuer and deposited in the Revenue Fund.

C. CHANGE OF DEPOSITORY BANK. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Series 2009 A Bonds, provide evidence that there will be at least 450 bona fide users upon the System on completion, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Depository Bank and the Commission such additional sums as shall be necessary to pay the charges and fees of the Depository Bank or the Commission then due.

F. INVESTMENT OF EXCESS BALANCES. The monies in excess of the sum insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State of West Virginia.

G. REMITTANCES. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

H. GROSS REVENUES. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE V

GENERAL COVENANTS, ETC.

Section 5.01. General Statement. So long as the Series 2009 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2009 A Bonds Reserve Account sums sufficient to prepay the entire remaining unpaid principal of the Series 2009 A Bonds, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenant between the Issuer and the Holder of the Series 2009 A Bonds.

Section 5.02. Rates. So long as the Prior Bonds are outstanding, the Issuer will maintain rates as required in the Prior Resolutions. So long as the Series 2009 A Bonds are outstanding, the Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Series 2009 A Bonds and the Prior Bonds and sufficient to make the payments required herein into all funds and accounts and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 5.03. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System or any part thereof, except as provided in the Prior Resolutions. The System will not be sold without the prior written consent of the Purchaser so long as the Series 2009 A Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04. Issuance of Additional Parity Bonds or Obligations. No additional Parity Bonds or obligations payable out of any of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser. No Parity Bonds shall be issued after issuance of the Series 2009 A Bonds unless the provisions contained in the Prior Resolution respecting issuance of Parity Bonds have been satisfied.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the

acquisition or construction of additions extensions, improvements or betterments to the System or refunding any outstanding Bonds, or both such purposes.

So long as the Series 2009 A Bonds and the Prior Bonds are Outstanding, 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 Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

- (1) The Bonds Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds than proposed to be issued.

The foregoing limitation may be waived or modified by the written consent of the Holders of the Prior Bonds, representing 75% of the then-outstanding principal indebtedness.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Series 2009 A Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value 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 damaged 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 \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Series 2009 A Bonds.

(c) VEHICULAR PUBLIC LIABILITY INSURANCE, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF THE DISTRICT ELIGIBLE THEREFOR AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds have been or will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation coverage shall be maintained as required by the laws of the State of West Virginia.

(e) FLOOD INSURANCE to be procured, to the extent available at reasonable cost to the Issuer; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

(f) FIDELITY BONDS will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in such amount as may be requested by the Purchaser from time to time.

(g) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Series 2009 A Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage Lien. For the further protection of the Holder of the Series 2009 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, on a parity with the Prior Bonds, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Series 2009 A Bonds.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

- (a) Failure to make payment of any monthly amortization installment upon the Series 2009 A Bonds at the date specified for payment thereof;
- (b) Failure to duly and punctually observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Series 2009 A Bonds or herein, or violation of or failure to observe any provision of any pertinent law; and
- (c) If a default occurs with respect to the Prior Bonds or the Prior Resolutions.

Section 5.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default, appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct; provided that, all rights and remedies of the Holders of the Prior Bonds shall be on a parity with the Series 2009 A Bonds.

Section 5.09. Fiscal Year; Budget. While the Series 2009 A Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day

of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 5.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 5.12. Books and Records; Audits. 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 the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Series 2009 A Bonds are outstanding.

Section 5.14. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consistent with the provisions hereof, shall be as set forth in the Recommended Decision entered on February 13, 2009 which became Final Order of the Public Service Commission of West Virginia on March 5, 2009, in Case No. 08-1895-PWD-CN and are incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the Series 2009 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2009 A Bonds, the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2009 A Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through such direct payment to the Holder of the Series 2009 A Bonds, the Issuer may not defease the Series 2009 A Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 7.02. Modification or Amendment. The Bond Legislation may not be modified or amended after final passage without the prior written consent of the Purchaser.

Section 7.03. Delivery of Bonds. The Chairman, Secretary and Treasurer of the Governing Body are hereby authorized and directed to cause the Series 2009 A Bonds, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2009 A Bonds.

Section 7.05. Conflicting Provisions Repealed. The Prior Resolutions and all parts thereof not expressly hereby changed shall continue in full force and effect and this Bond Legislation shall be supplemental to the Prior Resolutions.

All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47) or the Prior Resolutions.

Section 7.06. Table of Contents and Headings. The Table of Contents and headings 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 7.07. 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 7.08. Effective Date. This Resolution shall take effect immediately upon its adoption.

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Adopted this 15th day of October, 2009.

BIRCH RIVER PUBLIC SERVICE DISTRICT

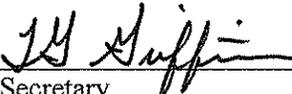
By: *Curtis E. Davis*
Its: Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of BIRCH RIVER PUBLIC SERVICE DISTRICT on the 15th day of October, 2009.

Dated: October 19, 2009.

[SEAL]


Secretary

02.16.09
073720.00001

BIRCH RIVER PUBLIC SERVICE DISTRICT

Water Revenue Bond, Series 1998

BOND RESOLUTION

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BIRCH RIVER PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$434,000 WATER REVENUE BOND, SERIES 1998, OF BIRCH RIVER PUBLIC SERVICE DISTRICT, TO FINANCE THE COST, NOT OTHERWISE PROVIDED, OF ACQUISITION AND CONSTRUCTION OF NEW PUBLIC WATERWORKS FACILITIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BOND; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF BIRCH RIVER PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS
AND DEFINITIONS

Section 1.01. Authority for This Resolution. This Resolution is adopted pursuant to the provisions of Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. Birch River Public Service District (the "Issuer") is a public corporation and public service district and political subdivision of the State of West Virginia in Nicholas and Braxton Counties of said State, duly created pursuant to the Act by The County Commission of Nicholas County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer does not currently own or operate a public waterworks system. The Issuer desires to finance and acquire, construct, operate and maintain certain public service properties consisting of a water distribution system within the boundaries of the Issuer to be owned and operated by the Issuer.

B. 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 an eight inch water line along West Virginia Route 19/40 and Route 19 from Flatwoods-Canoe Run Public Service District to Birch River, including a high speed booster pump station, a 150,000 gallon storage tank, fire hydrants, 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 with the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The Project and any further extensions or improvements thereto constituting waterworks facilities, are herein called the "System." The Issuer will purchase water from Flatwoods-Canoe Run Public Service District pursuant to a water purchase contract between the Issuer and Flatwoods-Canoe Run Public Service District. 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.

C. 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 costs of operation and maintenance of the System, the principal of and interest on the Bond (as hereinafter defined) and all debt service, reserve fund and other payments provided for herein.

D. The estimated maximum cost of the acquisition and construction of the Project is \$2,109,000, of which \$434,000 will be obtained from the proceeds of sale of the Bond herein authorized, \$925,000 from a grant by the Purchaser (as hereinafter defined), and \$750,000 from a grant by the Appalachian Regional Commission.

E. It is necessary for the Issuer to issue its water revenue bond in the principal amount of \$434,000 to finance a portion of the cost of such acquisition and construction in the manner hereinafter provided. The cost of such acquisition and construction shall be deemed to include, without being limited to, the cost of acquisition and construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Bond prior to, during and for 6 months after completion of such acquisition or construction; engineering, fiscal agents and legal 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 the Project, administrative expense, and such other expenses as may be necessary or incident to the financing authorized hereby and the acquisition or construction of the properties and the placing of same in operation; provided, that reimbursement to the Issuer for any

amounts expended by it for the repayment of indebtedness incurred for costs of the Project by the Issuer shall be deemed costs of the Project.

F. The period of usefulness of the System after completion of the Project is not less than 40 years.

G. There are no outstanding bonds or obligations of the Issuer which will rank prior to or on a parity with the Bond as to liens, pledge and/or source of and security for payment.

H. It is in the best interest of the Issuer that the Bond be sold to the Purchaser, pursuant to the terms and provisions of a Letter of Conditions dated December 22, 1994, and all amendments thereto, if any (collectively, the "Letter of Conditions").

I. 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 Bond, or will have so complied prior to issuance of the Bond, 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 Bond, the acquisition and construction of the Project, the imposition of rates and charges, and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bond by those who shall be the Registered Owner of the same from time to time, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Bond.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Chapter 16, Article 13A of the West Virginia Code of 1931, as amended.

"Bond" means the Water Revenue Bond, Series 1998, authorized hereby to be issued pursuant to this Bond Legislation.

"Bond Legislation," "Bond Resolution" or "Resolution" means this Resolution and all resolutions supplemental hereto and amendatory hereof.

"Bond Registrar" means the Issuer, which shall usually so act by its Secretary.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Haworth, Meyer & Boleyn, Inc., South Charleston, West 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.

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

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"FDIC" means the Federal Deposit Insurance Corporation.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Public Service Board of the Issuer.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America.

"Herein" or "herein" means in this Bond Legislation.

"Issuer," "Borrower" or "District" means Birch River Public Service District, a public service district and public corporation and political subdivision of the State of West Virginia, in Nicholas and Braxton Counties, West Virginia, and includes the Governing Body.

"Letter of Conditions" means, collectively, the Letter of Conditions of the Purchaser dated December 22, 1994, and all amendments thereto, if any.

"Net Revenues" means the balance of the Gross Revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed 1/6th of the budgeted Operating Expenses stated above for the current year as working capital, and language herein requiring payment of Operating Expenses means also retention of not to exceed such sum as working capital, provided that all monthly amortization payments upon the Bond and into the Reserve Fund and the Depreciation Account have been made to the last monthly payment date prior to the date of such retention.

"Project" shall have the meaning stated in Section 1.02B above.

"Purchaser" or "Government" means United States Department of Agriculture, Rural Utilities Service (formerly Farmers Home Administration), and any successor thereof, acting for and on behalf of the United States of America.

"Qualified Investments" means and includes any of the following, to the extent such investments are permitted by law:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC (hereinbefore defined) or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service or Standard & Poor's Corporation.

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

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"State" means the State of West Virginia.

"System" means the Project initially, and includes 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 and all additions, extensions, improvements, properties 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.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neuter gender shall include any other gender; and any requirement for execution or attestation of the Bond or any certificate or other document by the Chairman or the Secretary shall mean that such Bond, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

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 and ordered the acquisition and construction of the Project, at an estimated cost of \$2,109,000, 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 Bond hereby authorized shall be applied as provided in Article IV hereof.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BOND

Section 3.01. Authorization of Bond. Subject and pursuant to the provisions of the Bond Legislation, the Bond of the Issuer, to be known as "Water Revenue Bond, Series 1998," is hereby authorized to be issued in the aggregate principal amount of not exceeding \$434,000 for the purpose of permanently financing a portion of the cost of the acquisition and construction of the Project.

Section 3.02. Description of Bond. The Bond shall be issued in single form, numbered R-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The Bond shall bear interest from the date of delivery, payable monthly at the rate of 4.5% per annum, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bond. The Bond shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Bond, and the right to principal of and stated interest on the Bond, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Bond.

Section 3.04. Bond Registrar. The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, sufficient books for the registration and transfer of the Bond, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Bond initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Bond as hereinbefore provided.

The Bond Registrar shall accept the Bond for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Bond shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Bond shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Bond shall cease to be such officer of the Issuer before the Bond so signed and sealed has been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bond shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bond Secured by Pledge of Net Revenues. The payment of the debt service of the Bond shall be secured forthwith by a first lien on the Net Revenues derived from the System, in addition to the statutory mortgage lien on the System hereinafter provided for. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bond, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due.

Section 3.08. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

BIRCH RIVER PUBLIC SERVICE DISTRICT

WATER REVENUE BOND, SERIES 1998

\$434,000

No. R-1

Date: _____

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FOUR HUNDRED THIRTY-FOUR THOUSAND DOLLARS (\$434,000), plus interest on the unpaid principal balance at the rate of 4.5% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and

shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing the cost of improvements and extensions to the existing waterworks system (the "System") of the Borrower, is payable solely from and secured by the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation, nor shall the Borrower be obligated to pay the same or interest thereon except from the special fund so provided.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolution and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, 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 only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"), and a resolution of the Borrower duly adopted authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary-Treasurer, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT

[CORPORATE SEAL]

Chairman, Public Service Board
Rt. 3, Box 6A
Birch River, West Virginia 26610

ATTEST:

Secretary-Treasurer, Public Service Board

(Form of)

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$	10/05/98	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond
on the books kept for registration of the within Bond of the said Issuer with full power of
substitution in the premises.

Dated: _____, _____.

In the presence of:

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created and established with, and shall be held by, the Depository Bank, separate, distinct and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Reserve Fund;
- (3) Depreciation Account; and
- (4) Project Construction Account.

Section 4.02. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Bond shall be deposited upon receipt by the Issuer in the Project Construction Account. The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Moneys in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

Pending application as provided in this Section 4.02, money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.03. Covenants of the Issuer as to System Revenues and Funds.

So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bond remaining unpaid, together with interest accrued to the date of such payment, the Issuer further covenants with the holder of the Bond as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Resolution and 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 the Resolution.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first, each month, pay from the moneys in the Revenue Fund all current Operating Expenses.

(2) The Issuer shall next, each month, on or before the due date of payment of each installment on the Bond, transfer from the Revenue Fund and remit to the National Finance Office designated in the Bond (or such other place as may be provided pursuant to the Bond), the amounts required to pay the interest on the Bond, and to amortize the principal of the Bond over the life of the Bond issue.

(3) The Issuer shall next, each month, on each date that payment is made as set forth in (2) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Reserve Fund, $\frac{1}{2}$ of $\frac{1}{12}$ th of $\frac{1}{10}$ th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bond in any year, until the amount in the Reserve Fund equals such maximum amount (the "Minimum Reserve"). After the Minimum Reserve

has been accumulated in the Reserve Fund, the Issuer shall, on each date that payment is made as set forth in (3) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Account, $\frac{1}{2}$ of $\frac{1}{12}$ th of $\frac{1}{10}$ th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bond in any year, so long as the Bond is outstanding, to the Depreciation Account established with the Depository Bank, provided, however, that in the event additional monies shall be required to maintain the Minimum Reserve in the Reserve Fund, payment of monies to the Depreciation Account as provided in this paragraph shall not be made and such payments shall be made to the Reserve Fund until the Minimum Reserve is contained therein, at which time payments to the Depreciation Account shall resume. Moneys in the Reserve Fund shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Bond to said National Finance Office (or other place provided) as the same shall become due or for prepayment of installments on the Bond, or for mandatory prepayment of the Bond as hereinafter provided, and for no other purpose.

(4) The Issuer shall next, each month, on each date that payment is made as set forth in (2) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Account, $\frac{1}{2}$ of $\frac{1}{12}$ th of $\frac{1}{10}$ th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bond in any year. Moneys in the Depreciation Account shall be used first to make up any deficiencies for monthly payments of principal of and interest on the Bond as the same become due, and next to restore to the Reserve Fund any sum or sums transferred therefrom. Thereafter, and provided that payments into the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Depreciation Account may be withdrawn by the Issuer and used for extraordinary repairs and for replacements of equipment and improvements for the System, or any part thereof.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, moneys remaining therein and not permitted to be retained therein, if any,

may be used to prepay installments of the Bond, or for any lawful purpose.

Whenever the money in the Reserve Fund shall be sufficient to prepay the Bond in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Bond at the earliest practical date and in accordance with applicable provisions hereof.

The Depository Bank is hereby designated as the Fiscal Agent for the administration of the Reserve Fund and the Depreciation Account herein provided, and all amounts required for the Reserve Fund and the Depreciation Account will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

The Revenue Fund, the Reserve Fund and the Depreciation Account shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bond and the interest thereon, but the Depository Bank shall not be a trustee as to such funds.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Depository Bank, at the direction of the Issuer, shall keep the moneys in the Reserve Fund and the Depreciation Account invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia State Board of Investments. 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 interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually into the Revenue Fund by the Depository Bank.

C. CHANGE OF FISCAL AGENT. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank and Fiscal Agent if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Bond, provide evidence that there will be at least 195 bona fide full-time users upon the Project on completion, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Depository Bank then due.

F. INVESTMENT OF EXCESS BALANCES. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State of West Virginia.

G. REMITTANCES. All remittances made by the Issuer to the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

H. GROSS REVENUES. The Gross Revenues of the System shall only be used for purposes of the System.

Section 4.04. Interim Construction Financing. In order to pay certain costs of the Project pending receipt of proceeds of the grants and advances of principal of the Bond, the Issuer may issue and sell its interim construction notes in an aggregate principal amount not to exceed \$500,000 (the "Notes"). The Notes shall be in the form of a line of credit from a commercial bank or other lender, and the Issuer is hereby authorized to enter into a credit agreement, with such bank or other lender. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the credit agreement.

The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Bond or the grants. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer, if any, is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth herein.

ARTICLE V

GENERAL COVENANTS, ETC.

Section 5.01. General Statement. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Bondholder.

Section 5.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bond and sufficient to make the payments required herein into the Reserve Fund and the Depreciation Account and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 5.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04. Issuance of Additional Parity Bonds or Obligations. No additional parity bonds or obligations payable out of any of the Revenues of the System shall be issued after the issuance of the Bond pursuant hereto, except with the prior written consent of the Purchaser.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

A. Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value 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 damaged 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 \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bond.

C. Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

D. Workers' Compensation Coverage for All Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds have been or will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation coverage shall be maintained as required by the laws of the State of West Virginia.

E. Flood Insurance to be procured, to the extent available at reasonable cost to the Issuer; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

F. Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount of \$50,000 upon the treasurer, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

G. Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond is outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage Lien. For the further protection of the Holder of the Bond, 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 and shall take effect immediately upon the delivery of the Bond.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

A. Failure to make payment of any monthly amortization installment upon the Bond at the date specified for payment thereof; and

B. Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bond or herein, or violation of or failure to observe any provision of any pertinent law.

Section 5.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 5.09. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 5.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 5.12. Books and Records; Audits. 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 the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 5.14. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as set forth in the Commission Order of the Public Service Commission of West Virginia, entered on May 15, 1998, Case No. 95-0395-PWD-CN, which Commission Order is incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Payment of Bond. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the Bond, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Bond, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Bond, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 7.02. Modification or Amendment. Prior to issuance of the Bond, this Resolution may be amended or supplemented in any way by resolution. Following issuance of the Bond, no resolution amendatory hereof or supplemental hereto, shall be made without the prior written consent of the Purchaser.

Section 7.03. Delivery of Bond. The Chairman and Secretary-Treasurer of the Governing Body are hereby authorized and directed to cause the Bond, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 7.05. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 7.06. Table of Contents and Headings. The Table of Contents and headings 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.

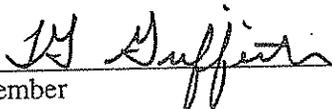
Section 7.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular 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, Vice-Chairman, Secretary-Treasurer 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 7.08. Effective Time. This Resolution shall take effect immediately upon its adoption.

Adopted: October 5, 1998.



Chairman



Member



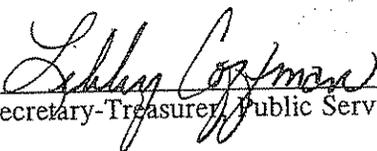
Member

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of BIRCH RIVER PUBLIC SERVICE DISTRICT on the 5th day of October, 1998.

Dated: October 5, 1998.

[SEAL]


Secretary-Treasurer Public Service Board

10/01/98
073720/98001

BIRCH RIVER PUBLIC SERVICE DISTRICT

WATER REVENUE BOND, SERIES 1998

\$434,000

No. R-1

Date: October 5, 1998

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FOUR HUNDRED THIRTY-FOUR THOUSAND DOLLARS (\$434,000), plus interest on the unpaid principal balance at the rate of 4.5% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$1,993.00, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing the cost of improvements and extensions to the existing waterworks system (the "System") of the Borrower, is payable solely from and secured by the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation, nor shall the Borrower be obligated to pay the same or interest thereon except from the special fund so provided.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolution and upon surrender and

cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, 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 only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"); and a resolution of the Borrower duly adopted authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary-Treasurer, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT

[CORPORATE SEAL]

Chairman, Public Service Board
Rt. 3, Box 6A
Birch River, West Virginia 26610

ATTEST:

Secretary-Treasurer, Public Service Board

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$	10/05/98	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond
on the books kept for registration of the within Bond of the said Issuer with full power of
substitution in the premises.

Dated: _____, _____.

In the presence of:

10/01/98
073720/98001



**United States Department of Agriculture
Rural Development**
West Virginia State Office

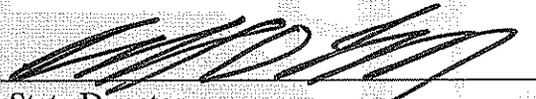
October 19, 2009

Birch River Public Service District
Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

TO WHOM IT MAY CONCERN:

The undersigned duly authorized representative of the United States of America, acting through the Rural Utilities Service, United States Department of Agriculture, the present holder of the Prior Bonds, hereinafter defined and described, hereby (a) consents to the issuance of the Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the original aggregate principal amount of \$630,000 (the "Bonds"), by Birch River Public Service District (the "Issuer"), under the terms of the bond resolution authorizing the issuance of the Bonds (the "Resolution"), on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds") and (b) waives any requirements imposed by the Prior Bonds or the resolution authorizing the Prior Bonds (collectively, the "Prior Resolutions"), regarding the issuance of parity bonds which are not met by the Bonds or the Resolution, and (c) consents to any amendments made to the Prior Resolutions by the Resolution.

WITNESSETH my signature on this 19th day of October, 2009.


State Director

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

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To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).



**United States Department of Agriculture
Rural Development**
West Virginia State Office

October 15, 2009

Curtis Davis, Chairman
Birch River Public Service District
P. O. Box 218
Birch River, WV 26610

RE: Amendment No. 2 to
Letter of Conditions

Dear Mr. Davis:

This letter, with Attachment No. 1 amends the letter of conditions dated February 8, 2009 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RD loan in the amount of \$630,000, an initial RD grant in the amount of \$729,000 a subsequent RD grant in the amount of \$623,076 and other funding in the amount of \$3,052,811.83 for a total project cost of \$5,034,887.83. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Land Program.

Subject to the requirements noted herein, all of the conditions of the March 20, 2007 and February 8, 2009 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

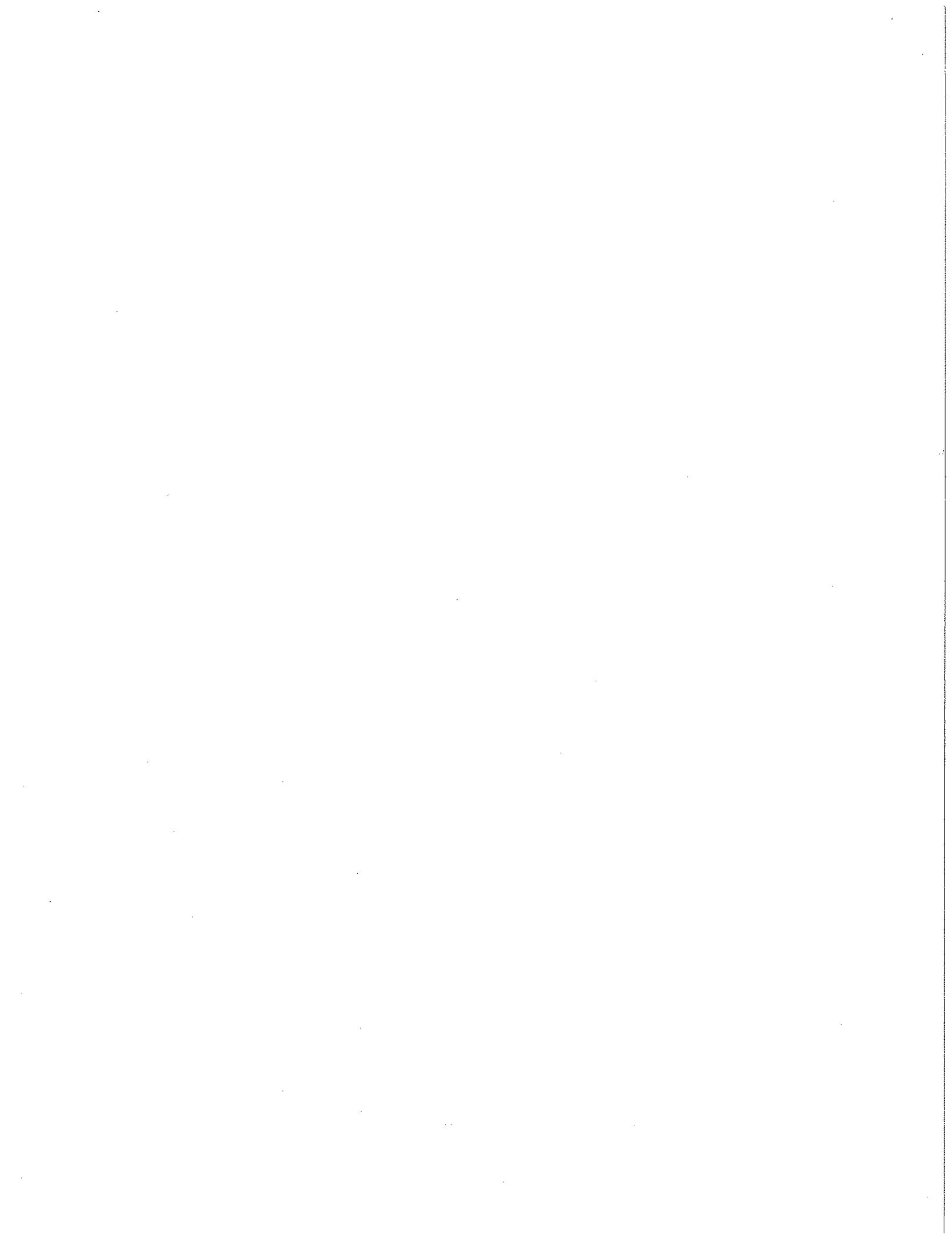
Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836
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Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).



If the conditions set forth in this letter are not met within six (6) months from the date hereof, USDA, Rural Development reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the Public Service District still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, our agency reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,



BOBBY LEWIS
State Director

Enclosures

cc: Stephen Wetherbee, Area Director
Attention: Teresa Miller, Area Specialist
Beckley, WV

Smith, Cochran & Hicks, CPAs
405 Capital Street, Suite 908
Charleston, WV 25301

Ray Tilley, P.E.
E. L. Robinson Engineering
207 Brookshire Lane
Beckley, WV 25801

Steptoe & Johnson, PLLC
Attorneys at Law
P. O. Box 1588
Charleston, WV 25326

Thomas R. Michael, Attorney at Law
P. O. Box 250
Lost Creek, WV 26385

WVDEP-Abandoned Mine Lands & Reclamation
6010 5th Street, S.E. Box 20
Charleston, WV 25304

Attachment No. 1 to Letter of Conditions
 For: Birch River Public Service District
 Date: October 15, 2009

Project Construction Budget

<u>PROJECT COST</u>	<u>RUS SUB GRANT</u>	<u>AML</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$399,742.22	\$3,052,811.83	\$ 579,000	\$ 330,375	\$ 4,361,929.05
CONST. CONTINGENCY	\$ 80,033.65				\$ 80,033.65
LAND & RIGHTS			\$ 20,000		\$ 20,000
LEGAL FEES				\$ 25,000	\$ 25,000
BOND COUNSEL				\$ 15,000	\$ 15,000
ACCOUNTING				\$ 7,500	\$ 7,500
ENGINEERING FEES	\$ 69,000		\$ 130,000	\$ 196,000	\$ 395,000
Basic - \$ 245,000					
Insp. - \$ 130,000					
Special - : 20,000					
INTEREST				\$ 51,125	\$ 51,125
PERMITS				\$ 5,000	\$ 5,000
TECHNICAL SERVICES	\$ 40,000				\$ 40,000
PROJECT CONTG.	\$ 34,300.13				\$ 34,300.13
TOTAL	\$ 623,076	\$3,052,811.83	\$ 729,000	\$ 630,000	\$5,034,887.83



United States Department of Agriculture
Rural Development
West Virginia State Office

February 8, 2008

Curtis Davis, Chairman
Birch River Public Service District
P.O. Box 218
Birch River, WV 26610

RE: Amendment No. 1 to the
Letter of Conditions

Dear Mr. Davis:

This letter, with Attachment No. 1 amends the letter of conditions dated June 15, 2007 and further establishes conditions which must be understood by you before further consideration may be given to your application. The grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$630,000, an initial RUS grant in the amount of \$729,000, a subsequent RUS grant in the amount of \$623,076, and other funding in the amount of \$2,024,924, for a total project cost of \$4,007,000. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Lands Program.

Subject to the requirements noted herein, all of the conditions of the June 15, 2007 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

75 High Street Federal Building • Suite 320 • Morgantown, WV 26505-7500
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

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Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Enclosed are the following:

Attachment No. 1 – Project Construction Budget (All Copies).

The conditions referred to above are as follows:

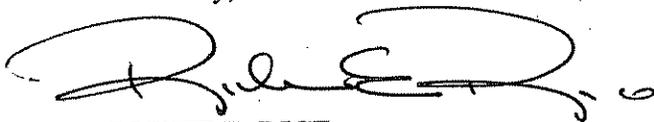
1. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided to RUS (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

Form RD 1940-1	“Request for Obligation of Funds”
RUS Bulletin 1780-12	“Water or Waste System Grant Agreement”
Form RD 1942-46	“Letter of Intent to Meet Conditions”

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve month period and it is determined the Public Service District still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,



RICKIE E. RICE
State Director

Enclosures

cc: Area Director
Attention: Rural Development Specialist (RUS)
Beckley, WV

Ray Tilley, P.E.
E. L. Robinson
207 Brookshire Lane
Beckley, WV 25801

Smith, Cochran & Hicks, CPA's
405 Capital Street, Suite 908
Charleston, WV 25301

Steptoe & Johnson, PLLC
Attorney's at Law
P.O. Box 1588
Charleston, WV 25326

Thomas R. Michael, Attorney at Law
P.O. Box 250
Lost Creek, WV 26385

WVDEP-Abandoned Mine Lands & Reclamation
6010 5th Street, S.E. Box 20
Charleston, WV 25304

Attachment No. 1 to Letter of Conditions
 For: Birch River Public Service District
 Date: February 8, 2008

Project Construction Budget

<u>PROJECT COST</u>	<u>RUS SUB GRANT</u>	<u>AML</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 335,210	\$ 2,024,924	\$ 419,168	\$ 332,857	\$ 3,112,159
CONST. CONTINGENCY	\$ 67,186		\$ 83,982	\$ 66,684	\$ 217,852
LAND & RIGHTS	\$ 6,170		\$ 7,710	\$ 6,120	\$ 20,000
LEGAL FEES	\$ 7,710		\$ 9,640	\$ 7,650	\$ 25,000
BOND COUNSEL	\$ 4,630		\$ 5,780	\$ 4,590	\$ 15,000
ACCOUNTING	\$ 2,310		\$ 2,890	\$ 2,300	\$ 7,500
ENGINEERING FEES	\$ 121,820		\$ 152,270	\$ 120,910	\$ 395,000
Basic - \$ 245,000					
Insp. - \$ 130,000					
Special - \$ 20,000					
INTEREST				\$ 51,125	\$ 51,125
PERMITS	\$ 9,250		\$ 11,570	\$ 9,180	\$ 30,000
TECHNICAL SERVICES	\$ 40,000				\$ 40,000
PROJECT CONTG.	\$ 28,790		\$ 35,990	\$ 28,584	\$ 93,364
TOTAL	\$ 623,076	\$ 2,024,924	\$ 729,000	\$ 630,000	\$ 4,007,000



United States Department of Agriculture
Rural Development
West Virginia State Office

June 15, 2007

~~Curtis Davis, Chairman
Birch River Public Service District
P.O. Box 218
Birch River, WV 26610~~

Dear Mr. Davis:

This letter, with Attachments 1 through 14 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$630,000, an RUS grant in the amount of \$729,000, and other funding in the amount of \$2,608,000, for a total project cost of \$3,967,000. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Lands program and a grant from the state.

The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted. Enclosed are the following:

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist for Birch River Public Service District (All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)

75 High Street Federal Building, Suite 320, Morgantown, WV 26505-7500
Phone: (304) 284-4860 • Fax: (304) 284-4893 • TDD: (304) 284-4836 • Web: <http://www.rurdev.usda.gov/wv>

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- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)
- Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
- Attachment No. 8 - Government Auditing Standards (Revision 2003) (Accountant Copy)
- Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"
- Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
- Attachment No. 11 - Birch River Public Service District Water Users Agreement (Applicant and Attorney Copies)
- Attachment No. 12 - Declination Statement (Applicant and Attorney Copies)
- Attachment No. 13 - Sample Credit Agreement (Applicant Copy)
- Attachment No. 14 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.125% interest rate and a monthly amortization factor of .00435, which provides for a monthly payment of \$2,741. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of equal priority, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond resolution which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-12 and RUS Bulletin 1780-27 which are mentioned later.

3. Users - This conditional commitment is based upon you providing evidence that you will have at least 450 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 214 signed user agreements and a signed certification from you that identifies and attests to the number of users actually connected to and using the PSD's existing water system, which is to be partially replaced by the new system, at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Water Users Agreement (RUS Bulletin 1780-9) will be used. Each user signing an agreement must make a user contribution of \$50. Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a "Service Declination Statement." A guide "Service Declination Statement" is attached for your use. If a potential user refuses to sign either a user agreement or a declination statement, the individual making the contact for the PSD should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service. Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the water service of the existing system (paying monthly bills), (2) signed user agreements, (3) signed service declination statements, (4) records evidencing user contributions having been paid, (5) a map locating each potential user's property in the new service area identifying it by number, (6) a list of all signed bona fide users numbered so as to be a cross-reference with the map, and (7) a list of all declination statements numbered so as to be a cross-reference with the map.

4. Bond Counsel Services - The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. E-510, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.

6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, “Legal Services Agreement” is enclosed for your use.
7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:
 - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).
 - b. Prior to loan/grant closing, your accountant must certify that the accounts and records as required by your bond resolution have been established and are operational.

The Accountant’s Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your PSD. The attached booklets, “Government Auditing Standards (Revised 2003)” (Attachment No. 8), and RUS Bulletins 1780-30 and 1780-31 (Attachment Nos. 9 and 10) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$500,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
 - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

- b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the PSD already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
 - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
 - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions. The attorney's legal opinion should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and West Virginia State Code Chapter 54 have been met in the acquisition of both real property and rights-of-way. Such requirements may include, but are not limited to, distributing informational material to all affected property owners, and completing appraisals of the affected properties.
 - e. On the day of loan closing, the PSD's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the PSD has already acquired real property(s) (land or facilities), the PSD's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
 - Railroads
 - State Department of Health
 - Department of Environmental Protection
 - Corps of Engineers
 - Public Land Corporation

10. Public Service Commission Approvals - You must obtain the following from the West Virginia Public Service Commission:

- a. A Certificate of Convenience and Necessity.
- b. Approval of user charges that are acceptable to you and the Rural Utilities Service.
- c. Approval of financing for the project's proposed financing arrangements.

The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for review.

11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:

- a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
- b. Workers' Compensation - In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time.

The minimum coverage acceptable to RUS once your project is in operation will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).

- d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
 - i. If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
 - ii. Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special

flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

- e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications –

- a. The contract documents should consist of the following:
 - i. EJCDC Document No. C-521, 2002 Edition, “Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price” and EJCDC Document No. C-710, 2002 Edition, “Standard General Conditions of the Construction Contract – Funding Agency Edition” and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.
 - ii. “RUS Supplemental General Conditions.”

RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance,” is enclosed for use by your engineer in the preparation of the contract documents (Attachment No. 7).

- b. The contract documents must provide, as a minimum, the following insurance:
 - i. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the PSD and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
 - ii. Builder’s Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
 - iii. Workers’ Compensation - In accordance with applicable State laws.

- c. The contract documents and final plans and specifications must be submitted to RUS for approval.
 - d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.
13. State Prevailing Wage Law - You should ensure that all requirements of Article 5A of the West Virginia State Prevailing Wage Law, "Wages for Construction of Public Improvements" are met during construction of the project.
14. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No. 13).
15. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your PSD, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

Public Bodies – Interest earned on grant funds in excess of \$100 per year will be submitted to RUS at least quarterly as required in 7 CFR 3016.

The PSD will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of \$100,000 will be secured by a collateral pledge in accordance with Treasury Circular Number 176.

The PSD must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

16. Water Purchase Contract - You propose to purchase treated water from Flatwoods-Canoe Run PSD; therefore, you must enter into a Water Purchase Contract. Form RD 442-30 must be used unless you receive an exception from RUS.
17. Other Project Funds - Prior to advertisement for construction bids, you must provide evidence showing the approval of any other project funds. This evidence should include a copy of the funding award. Prior to award of the contract(s) to

the contractor(s), you must provide evidence that the other project funds are available for expenditure. This evidence should consist of at least a letter from the funding agency stating the funds are available for expenditure.

18. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

Form RD 1940-1 - "Request for Obligation of Funds"
 RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
 RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
 Form RD 400-1 - "Equal Opportunity Agreement"
 Form RD 400-4 - "Assurance Agreement"
 Form AD 1047 - "Certification Regarding Debarment - Primary"
 Form AD 1049 - "Certification Regarding Drug-Free Workplace"
 Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
 FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
 Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)
 Certification of Compliance
 Form RD 1942-46, "Letter of Intent to Meet Conditions"

19. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.

20. Upon receipt of the loan and grant docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RUS project funds will be considered to be RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the RUS grant, that part would be RUS loan funds.

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely yours,

Rm

 ROBERT M. STEPTOE, III
 State Director

Enclosures

cc: Rural Development Specialist
 Beckley, WV

Ray Tilley, P.E.
 E.L. Robinson
 207 Brookshire Lane
 Beckley, WV 25801

Smith, Cochran & Hicks, CPA's
 405 Capital Street, Suite 908
 Charleston, WV 25301

✓ Steptoe & Johnson
 Attorney's at Law
 P.O. Box 1588
 Charleston, WV 25326

Thomas R. Michael
 Attorney at Law
 P.O. Box 250
 Lost Creek, WV 26385

WVDEP – Abandoned Mine Lands
 & Reclamation
 6010 5th Street, S.E., Box 20
 Charleston, WV 25304-2345

Project Construction Budget

<u>PROJECT COST</u>	<u>STATE GRANT</u>	<u>AML</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 335,210	\$ 2,024,924	\$ 419,168	\$ 332,857	\$ 3,112,159
CONST. CONTINGENCY	\$ 67,186		\$ 83,982	\$ 66,684	\$ 217,852
LAND & RIGHTS	\$ 6,170		\$ 7,710	\$ 6,120	\$ 20,000
LEGAL FEES	\$ 7,710		\$ 9,640	\$ 7,650	\$ 25,000
BOND COUNSEL	\$ 4,630		\$ 5,780	\$ 4,590	\$ 15,000
ACCOUNTING	\$ 2,310		\$ 2,890	\$ 2,300	\$ 7,500
ENGINEERING FEES	\$ 121,820		\$ 152,270	\$ 120,910	\$ 395,000
Basic - \$ 245,000					
Insp. - \$ 130,000					
Special - \$ 20,000					
INTEREST				\$ 51,125	\$ 51,125
PERMITS	\$ 9,250		\$ 11,570	\$ 9,180	\$ 30,000
EQUIPMENT					\$ -
PROJECT CONTG.	\$ 28,790		\$ 35,990	\$ 28,584	\$ 93,364
TOTAL	\$ 583,076	\$ 2,024,924	\$ 729,000	\$ 630,000	\$ 3,967,000

Rates

Available for general domestic, commercial, and industrial service.

First	3,000	gallons @	\$9.10	per M gallons
Over	3,000	gallons @	\$9.10	per M gallons
Next		gallons @		per M gallons

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed.

5/8" x 3/4"	meter	\$ 27.30	per month
3/4"	meter	\$ 40.95	per month
1"	meter	\$ 68.25	per month
1 1/2"	meter	\$ 136.50	per month
2"	meter	\$ 218.40	per month
3"	meter	\$ 409.50	per month
4"	meter	\$ 682.50	per month
6"	meter	\$ 1,365.00	per month
8"	meter	\$ 2,184.00	per month

Minimum Monthly Bill \$27.30 for 3,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, water service to the customer will be discontinued. Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

Prior to Construction - \$50.00

After the start of construction, there shall be a charge of \$200.00 for connection to the system.

Reconnection Charge

\$20.00

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

Birch River Public Service District
OPERATING BUDGET

OPERATING INCOME		
Metered Sales	\$ 195,367	
Penalties	\$ 3,336	
Other Income	\$ 5,947	
Reconnect Fees		
TOTAL OPERATING INCOME		<u>\$ 204,650</u>
NON OPERATING INCOME		
Interest income	\$ 11	
TOTAL NON OPERATING INCOME		<u>\$ 11</u>
TOTAL INCOME		<u>\$ 204,661</u>
EXPENSES		
O & M	\$ 138,477	
Taxes		
TOTAL EXPENSES		<u>\$ 138,477</u>
INCOME AVAILABLE FOR D/S (A)		<u>\$ 66,184</u>
DEBT SERVICE		
Existing Bond P & I (B)	\$ 23,916	
Proposed Bond P & I (B)	\$ 32,892	
TOTAL DEBT SERVICE		<u>\$ 56,808</u>
DEBT SERVICE RESERVE		
Debt Service Reserve*	\$ 5,681	
TOTAL DEBT SERVICE RESERVE		<u>\$ 5,681</u>
SURPLUS (DEFICIT)		<u><u>\$ 3,695</u></u>
DEBT COVERAGE (A/B)		\$ 1.17

Based on RUS loan of \$630,000 @ 4.125% for 38 years

Attachment No. 1 to Letter of Conditions
 For: Birch River Public Service District
 Date: June 15, 2007

Birch River Public Service District
 USE AND INCOME ANALYSIS
 EXISTING SYSTEM

Blocking	Cust.	Gall/ Mo.	Minimum Bills	First 3,000	Over 3,000	TOTAL REVENUE
0-3000	164	286.50	165			
Over 3,000	72	487.75		216.00	271.75	
Monthly Total	236.00	774.25	164.50	216.00	271.75	
Proposed Rates			\$ 27.30	\$ 9.10	\$ 9.10	
Monthly Revenues			\$ 4,490.85	\$ 1,965.60	\$ 2,472.93	\$ 8,929.38
Annual Revenues			\$ 53,890.20	\$ 23,587.20	\$ 29,675.10	\$ 107,152.50
Annual Revenue			\$107,152.50			
Adjustment Factor			1.00593988			
Adjusted Annual Revenue			\$107,789			

Birch River Public Service District
USE AND INCOME ANALYSIS
"IDENTIFIED EXTENSION AREAS"

Blocking	Cust.	Gal/ Mo.	Minimum Bills	FIRST 3,000	OVER 3,000	TOTAL REVENUE
0-3,000	150	397.5	150			
Over 3,000	64	352		192	160	
Monthly Total	214	749.5	150	192	160	
Proposed Rates			\$ 27.30	\$ 9.10	\$ 9.10	
Monthly Revenues			\$ 4,095.00	\$ 1,747.20	\$ 1,456.00	\$ 7,298.20
Annual Revenues			\$ 49,140.00	\$ 20,966.40	\$ 17,472.00	\$ 87,578.40

214 if 80% of potential customers

It is assumed that 150 customers will use 3,000 gallons or less and 64 customers will use 5,500 gallons

**UNITED STATES DEPARTMENT OF AGRICULTURE
 RURAL UTILITIES SERVICE
 Water and Waste Processing Checklist**

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
SF 424.2	Application for Federal Assistance	3	1780.31(b)	Applicant		Have	3
	DUNS Number	1		Applicant		Have	3
	CAIVRS Number	1		RUS		Have	CPAP Form
	Public Notice of Intent to File App./ Env. Notice	3	1780.19(a) 1794	Applicant		Have	3
Bulletin 1780-22	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	Applicant		Have	3
	Bond Ordn. or Resol. On Outstanding Debts	1	1780.33(e)	Applicant/ Attorney		Have	5
	Bonds or Notes Outstanding Debt	1	1780.33(e)	Applicant/ Attorney		Have	2
	Audit for last year of operation	1	1780.33(e)	Applicant/ Accountant		Have	1
	Staff Review Financial Statements	1	S.I. 1780.2	RUS		Have	1
	EJCDC No. 1910-1-FA	Agreement between Owner & Engineer	3	1780.39(b)	Applicant/ Engineer		Have

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney		Have	5
	Site Visit		S.I. 1780-2	RUS			3
	Processing Conference	1	1780.39(a)	RUS		Have	3
	Environmental Report	2	1794	Applicant		Have	3
	Environmental Assessment	2	1794	RUS/ Engineer		Have	3
	FONSI/ Evidence of Publication	1	Exhibit 1 RUS 1794 News Ad	RUS/ Applicant		Have	3
Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Engineer		Have	6
	Staff Engineer PER Review	1	1780.33(c)	RUS		Have	3
	Bill Analysis for existing system(s)	2	1780.33(c)	Applicant/ Engineer		Have	8
	Projected Bill Analysis for New Users	2	1780.33(c)	Applicant/ Engineer		Have	8
	Statement reporting the <u>total</u> number of <u>potential</u> users		1780.33(c)	Applicant/ Engineer		Have	8
	Rate Tariff	2	1780.33	Applicant		Have	8
	Applicant's IRS Tax Number(TIN)	1	1780.33(g)	Applicant		Have	3

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Agency Determination on the Availability of "Other Credit" with Documentation	1	1780.7(d)	RUS		Have	3
	Documentation on Service Area	1	1780.11	RUS		Have	3
Bulletin 1780-1	Project Selection Criteria	2	1780.17	RUS		Have	1
	Letter of Conditions	7	1780.41 (a)(5)	RUS		Have	3
AD 1049	Certification Regarding Drug-Free Workplace	1	1780.33(h)	Applicant		Have	5
	Minutes Adopting Drug-Free Workplace Program	1	LOC	Applicant			5
Exhibit A / A-1	Certifications Regarding Lobbying	2	1780.33(h)	Applicant		Have	2
CPAP Form	Project Information	3	1780.41(a)	RUS		Have	1
CPAP Form	Underwriting Information	3	1780.33(h)	RUS Applicant		Have	3
RD 1940-1	Request for Obligation of Funds	4	1780.41(a)	RUS/ Applicant		Have	2
Bulletin 1780-12	Association Water or Sewer System Grant Agreement	2	1780.45(c)	RUS/ Applicant		Have	2

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
RD 1942-46	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	Applicant		Have	3
AD 1047	Certification Regarding Debarment (Primary)	1	1780.33(h)	Applicant		Have	5
	Relationships/Associations with Agency Employees	1	1780.1(f)	RUS		Have	3
RD 1910-11	Applicant Certification, Federal Collection Policies	1	1780.33(h)	Applicant		Have	3
Bulletin 1780-27	Loan Resolution	1	1780.45 (a)(2)	Applicant		Have	5
RD 400-1	Equal Opportunity Agreement	1	1901-E	Applicant		Have	6
RD 400-4	Assurance Agreement	1	1901-E	Applicant		Have	3
	Legal Services Agreement with Bond Counsel	1	1780.39 (b)(3)	Applicant/ Bond Counsel		Have	5
	Agreement for Accounting Services	1	1780.39 (b)(2)	Applicant/ Accountant		Have	5
	Water Users Agreement (Copy)	1	1780.39 (c)(3)	Applicant			5
	Exception for Metering Devices	1	1780.57(m)	Applicant/ RUS			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Evidence of Users:						
	1. Map of Users with each identified by number	1	LOC	Applicant			Separate File
	2. List of Signed Users Numbered to Map	1	LOC	Applicant			5
	3. List of Declination Statements Numbered to Map	1	LOC	Applicant			5
	4. Evidence of Tap Fees Being Paid	1	LOC	Applicant			5
	5. Having Users Agreements and Declination Statements Available		LOC	Applicant			
	6. Certification Relative to Existing Users	1	LOC	Applicant			5
	Verification of Users	1	1780.44(b)	RUS			3
RD 442-30	Water Purchase Contract	1	1780.62/ 1780.63	Applicant/ Attorney/ RUS			5
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant			3
Lender Agreement/ Bulletin 1780-10/ 1780-10a	Interim Financing Documenta- tion	1	1780.39(d)	Applicant/ RUS			1
	DOH Permit	1	1780.15(d)	Applicant			6
	Railroad Permit	1	1780.15(d)	Applicant			6
	Public Land Corp. Permit	1	1780.15(d)	Applicant			6
	Corps of Engineers Permit	1	1780.15(d)	Applicant			6
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6
	Contract Documents, Plans & Specifications	2	1780.61(a)	Engineer			Separate File
	Agency Determination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5
	Waiver of Title Defects Letter	1	1780.44(g)	RUS			5
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
	Operation and Maintenance Agreement	1	1780.39 (b)(4)	Applicant			5
	Evidence of "Other Funds"	1	1780.44(f)	Applicant			2
<i>N/A</i>	Evidence of Applicant Contribution	1	1780.44(f)	Applicant			2
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2
	Positive Program to Encourage Connections when Completed	1	1780.39 (c)(5)	Applicant		HAVE	5
RD 442-10	Appraisal Report	1	1780.44(g)	RUS			8

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Documentation Relative to Health or Sanitary Hazards	1	1780.1 (c)(1) 1780.13 (b)(1)	RUS/State Health Department			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			6
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5
	S/O Closing Instructions	1	1780.44(h)	RUS			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
RD 400-8	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
N/A	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
N/A	Flood Insurance Policy	1	1780.39(g)	Applicant			7
440-24	Fidelity Bond	1	1780.39(g)	Applicant			7
1924-16	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
AD 1048	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5
	OGC Final Opinion	1	1780.45(g)	RUS			5

Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants*

§1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

§1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of \$100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

- (a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;
- (b) It must be established that not using bond counsel will produce significant savings in total legal costs;
- (c) The local attorney must be able and experienced in handling this type of legal work;
- (d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;
- (e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in §1780.94; and
- (f) Closing instructions must be issued by OGC.

§1780.82 [Reserved]

§1780.83 Bond transcript documents

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

- (a) Copies of all organizational documents;
- (b) Copies of general incumbency certificate;
- (c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;
- (d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;
- (e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;
- (f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;
- (g) Specimen bond, with any attached coupons;
- (h) Attorney's no-litigation certificate;
- (i) Certified copies of resolutions or other documents pertaining to the bond award;
- (j) Any additional or supporting documents required by bond counsel;
- (k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;
- (l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§1780.84 and 1780.86 [Reserved]

§1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) First preference - Form RD 440-22, "Promissory Note". Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) Second preference - single instruments with amortized installments. A single instrument providing for amortized installments which follows Form RD 440-22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) Monthly payments. Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) Semiannual payments. Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) Annual payments. Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) Third preference - single instruments with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of §1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) Coupon bonds. Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of §1780.94.

§1780.88 [Reserved]

§1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

§1780.90 Multiple advances of Agency funds using temporary debt instruments.

When none of the instruments described in §1780.87 are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (a) The date from which each advance will bear interest;
- (b) The interest rate as determined by §1780.13;
- (c) A payment schedule providing for interest on outstanding principal at least annually; and
- (d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

§§1780.91 - 1780.93 [Reserved]**§1780.94 Minimum bond specifications.**

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

(a) **Type and denominations.** Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.

(b) **Bond registration.** Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of "United States of America" and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

(c) **Size and quality.** Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(d) **Date of bond.** Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) **Payment date.** Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) **Extra payments.** Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (k) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) **Redemptions.** Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) Precautions. The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in RUS Bulletins 1780-27 or 1780-28.
[Revision 2, 06/04/99]

(4) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) Assessment bonds. When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) Multiple debt instruments. The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

RUS Instruction 1780

§1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

§§1780.96 - 1780.100 [Reserved]

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

3/5/2009

Entered: February 13, 2009

CASE NO. 08-1895-PWD-CN

BIRCH RIVER PUBLIC SERVICE DISTRICT,
a public utility, Birch River, Nicholas County.
Application for a certificate of convenience
and necessity for an extension to the District's
existing water distribution system in the Dille/
Widen area of Nicholas County and Clay County,
West Virginia.

RECOMMENDED DECISION

On November 3, 2008, Birch River Public Service District (Utility) filed an application for a certificate of convenience and necessity to extend its existing water distribution system in Nicholas and Clay Counties.

On November 5, 2008, the Commission required the Utility to publish notice of its filing in both Nicholas and Clay Counties. The Notice of Filing provided the opportunity for public protests.¹

On November 19, 2008, the Commission referred the matter requiring a decision on or before March 18, 2009.

On February 4, 2009, Staff recommended that the Utility's application be granted. Staff recommended a rate increase of 8.5% to support the project, which was less than that requested by the Utility.

On February 11, 2009, the Utility indicated that it was in agreement with all of Staff's recommendations.

¹The Utility properly published notice of the filings as demonstrated by the affidavits of publication filed with the Commission on November 17, 2008.

WKM

FINDINGS OF FACT

1. On November 3, 2008, the Utility filed an application for a certificate of convenience and necessity to extend its existing water distribution system in Nicholas and Clay Counties. (See application).

2. The project will provide service to 276 new customers. (See application and Staff filing of February 4, 2009).

3. The project is estimated to cost \$5,071,689, with a cost per customer of \$18,376 which Staff considers to be high for a water project. (Id.).

4. The project will be funded with a grant from the Abandoned Mine Lands grant program in the amount of \$3,089,613, a Rural Utilities Service loan in the amount of \$630,000 for forty years at an interest rate of 4.125% and a Rural Utilities Service grant in the amount of \$1,352,076. (Id.).

5. The West Virginia Infrastructure and Jobs Development Council has deemed the project to be technically feasible. (See Staff filing of February 4, 2009).

6. The Utility properly published the Notice of Filing and the only protest filed was withdrawn by the protestant. (See affidavits of publication filed November 17, 2008, and withdrawal of protest filed by Larry Brown on January 20, 2009).

7. The White Oak Road is a part of the base project and is not a deductive alternative. (See Staff filing of February 4, 2009, and copy of email from Utility's engineer dated January 23, 2009).

8. The project will require an increase in the Utility's rates of 8.5% which will result in the minimum bill increasing to \$32.13 and would produce an average bill based on 4,500 gallons of \$48.19. (See Staff filing of February 4, 2009).

9. The Staff-recommended rates will generate an additional \$113,137 in annual operating revenue and provide a surplus of \$8,382 with a debt service coverage of 132.31%. (Id.).

10. Staff recommended approval of the financing. (Id.).

11. Staff recommended the granting of the certificate of convenience and necessity. (Id.).

12. The water to supply this extension will be purchased from Flatwoods-Canoe Run Public Service District (Flatwoods). Flatwoods will also conduct all billing, meter reading and maintenance on this extension. (Id.).

13. Staff recommended that the Utility be required to modify its purchased water contract with Flatwoods in order to reflect the increased costs of this project. (Id.).

14. Customer density on the extension is about 15 customers per mile which Staff views as high, but acceptable. (See Staff filing of February 4, 2009).

15. The project has been approved by the West Virginia Office of Environmental Health Services which issued Permit No. 17,904 permitting the project. (Id.).

16. The plans and specifications of the project do not conflict with the Commission's Water Rules. (Id.).

17. 88% of the existing groundwater resources used by local residents for drinking water were degraded by past mining practices. (Id.).

18. There are a high number of malfunctioning septic systems in the area causing contamination to the ground water in the area. (Id.).

19. The project will bring not only reliable safe drinking water but also fire protection to the area. (Id.).

CONCLUSIONS OF LAW

1. Public convenience and necessity require the proposed project.
2. The proposed financing is reasonable and should be approved.
3. The application for a certificate of convenience and necessity should be granted.
4. The Staff-recommended rates are reasonable, just, based primarily on the cost of providing service and should be adopted for use by the Utility upon substantial completion of the project.

ORDER

IT IS, THEREFORE, ORDERED that the Birch River Public Service District be, and hereby is, granted a certificate of convenience and necessity to construct and operate the improvements to its water facilities as described in its application filed on November 3, 2008. The cost of the approved project shall not exceed \$5,071,689. Approval is contingent upon the Utility obtaining all necessary state and federal permits before construction.

IT IS FURTHER ORDERED that the proposed financing, consisting of an Abandoned Mine Lands grant in the amount of \$3,089,613, Rural Utilities Service grants totaling \$1,352,076 and an RUS loan in the amount of \$630,000 for forty years at 4.125% interest, be, and hereby is, approved.

IT IS FURTHER ORDERED that, if the plans, financing or scope of the project change, the Utility seek Commission approval of those changes. If any changes in project cost result in a modification of the rates, the Utility must seek Commission approval of such changes. If project-related rates remain unchanged, but the project costs change, the Utility

must file an affidavit, executed by a certified public accountant, verifying that the modifications to the project will not impact the approved rates and charges.

IT IS FURTHER ORDERED that the Utility provide the Commission a copy of the Engineer's certified bid tabulation for all contracts awarded on this project as soon as they are available.

IT IS FURTHER ORDERED that the Utility submit to the Commission a copy of the certificate of substantial completion issued for each construction contract associated with the project as soon as they are available.

IT IS FURTHER ORDERED that the Utility comply with all rules and regulations of the Division of Highways regarding the use of Division of Highways' rights-of-way, if any are used.

IT IS FURTHER ORDERED that the rates attached hereto as Appendix A, be, and hereby are, approved for use by the Birch River Public Service District for all service rendered on and after the date of substantial completion of the project.

IT IS FURTHER ORDERED that the White Oak Road is hereby determined to be a part of the base project and not a deductive alternative.

IT IS FURTHER ORDERED that the Birch River Public Service District revise its current contract with the Flatwoods-Canoe Run Public Service District to reflect the current tariff rate for purchased water from Flatwoods-Canoe Run Public Service District and the additional operation and maintenance expenses incurred by Flatwoods-Canoe Run Public Service District as a part of this project. Modifications should be submitted to the Commission for its review and approval under a separate case number.

IT IS FURTHER ORDERED that the matter be removed from the open docket.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served the exceptions.

If no exceptions are filed, this order shall become the order of the Commission, without further action, five (5) days following the expiration of the fifteen (15) day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order the order of the Commission

sooner than five (5) days after approval of such waiver by the Commission.



Keith A. George
Administrative Law Judge

KAG:cdk
081895a.wpd

BIRCH RIVER PUBLIC SERVICE DISTRICT
CASE NO. 08-1895-PWD-CN

APPROVED RATES

APPLICABILITY

Applicable within entire territory served.

AVAILABILITY

Available for general domestic, commercial, industrial and sale for resale water service.

RATES (customers with metered water supply)

\$10.71 per thousand gallons water usage.

MINIMUM CHARGE

No minimum bill will be rendered for less than the following based on meter size:

5/8-inch meter	\$ 28.26 per month
3/4-inch meter	\$ 42.39 per month
1 -inch meter	\$ 70.65 per month
1-1/2-inch meter	\$ 141.30 per month
2 -inch meter	\$ 226.08 per month
3 -inch meter	\$ 452.16 per month
4 -inch meter	\$ 706.50 per month
6 -inch meter	\$1,413.00 per month

The above minimum charge is subject to an additional \$1.29 per thousand gallons.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) charge will be added to the net current amount unpaid. The delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.

RECONNECTION CHARGE

\$20.00

To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$50.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This preconstruction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$200.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the service.

LEAK ADJUSTMENT

\$5.02 per thousand gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on customer's side of the meter. This rate shall be applied to all such unusual consumption above customer's historical average usage.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 19th day of November 2008.

CASE NO. 08-1895-PWD-CN

BIRCH RIVER PUBLIC SERVICE DISTRICT,
a public utility, Birch River, Nicholas County.

Application for a certificate of convenience and necessity for an extension to the District's existing water distribution system in the Dille/Widen area of Nicholas County and Clay County, West Virginia.

REFERRAL ORDER

W. Va. Code §24-2-11, which governs the requirements for certificates of convenience and necessity, was recently amended to reduce the Commission's review time for all projects approved by the West Virginia Infrastructure and Jobs Development Council. In such cases, the Commission is required to render a decision within one hundred-eighty days of the filing of the certificate application. However, if a protest to the application is received within thirty days after the required notice is provided, the Commission is authorized to take two hundred-seventy days to render its decision. See, W. Va. Code §24-2-11(e). This order shall refer this proceeding with decision deadlines based upon those contingencies.

ORDER

IT IS ORDERED that this proceeding be referred to the Division of Administrative Law Judges.

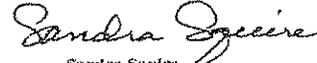
IT IS FURTHER ORDERED that if there has been no public protest to the application within thirty days after the required notice has been provided, the Division of Administrative Law Judges shall render its decision on or before March 18, 2009.

IT IS FURTHER ORDERED that if a public protest is received within thirty days after the required notice has been provided, the Division of Administrative Law Judges shall render its decision on or before June 1, 2009.

IT IS FURTHER ORDERED that if the participants desire an extension of the foregoing decision due date, they may seek an extension only upon formal application to the Commission.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

LCW/s
081895c.wpd

BIRCH RIVER PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

RECEIPT FOR SERIES 2009 A BONDS

The undersigned, authorized representative of the United States Department of Agriculture, Rural Utilities Service, for and on behalf of the United States of America (the "Purchaser"), hereby certifies this 19th day of October, 2009 as follows:

1. On the 19th day of October, 2009, at Birch River, West Virginia, the undersigned received for the Purchaser the Birch River Public Service District Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), No. AR-1 (the "Series 2009 A Bonds"), issued as a single, fully registered Bond, in the principal amount of \$630,000, dated the date hereof, bearing interest at the rate of 4.125% per annum, payable in monthly installments as stated in the Bond. The Series 2009 A Bonds represent the entire above captioned Bond issue.

2. At the time of such receipt, the Series 2009 A Bonds had been executed and sealed by the designated officials of the Public Service Board of Birch River Public Service District (the "Issuer").

3. At the time of such receipt, there was paid to the Issuer the sum of \$249,167.61 being a portion of the principal amount of the Series 2009 A Bonds. The balance of the principal amount of the Series 2009 A Bonds will be advanced by the Purchaser to the Issuer as acquisition and construction of the Project progresses.

[Remainder of Page Intentionally Blank]

WITNESS my signature on the day and year first written above.


Authorized Representative

10.01.09
073720.00001

SPECIMEN

UNITED STATES OF AMERICA
BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$630,000

No. AR-1

Date: October 19, 2009

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of SIX HUNDRED AND THIRTY THOUSAND DOLARS (\$630,000), plus interest on the unpaid principal balance at the rate of 4.125% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$2,741, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly

or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer, and (ii) to pay costs of issuance and related costs.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolutions and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, 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 only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the

West Virginia Code, as amended (the "Act"), and a Resolution of the Borrower duly adopted October 15, 2009, authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY, AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, WITH THE BORROWER'S WATER REVENUE BONDS, SERIES 1998 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 5, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$434,000 (THE "SERIES 1998 BONDS" OR "PRIOR BONDS").

In accordance with the requirements of the United States Department of Agriculture, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT

(Name of Borrower)

[CORPORATE SEAL]

Curtis [Signature]
(Signature of Executive Official)

Chairman:

P.O. Box 218
(P.O. Box No. or Street Address)

Birch River, West Virginia 26610
(City, State and Zip Code)

ATTEST:

[Signature]
(Signature of Attesting Official)

Secretary:

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, 20____.

In the presence of:

BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$630,000

REGISTRATION BOOKS

(No writing on these Books except by the Issuer as Registrar)

Bond No.	Date of Registration	In Whose Name Registered	Signature of Secretary of Registrar
AR-1	October 19, 2009	United States Department of Agriculture	



Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

October 19, 2009

Birch River Public Service District
Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

Birch River Public Service District
Birch River, West Virginia

United States Department of Agriculture
Beckley, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Birch River Public Service District in Nicholas and Clay Counties, West Virginia (the "Issuer"), of its \$630,000 Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) dated the date hereof (the "Bonds"), pursuant to 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 October 15, 2009 (the "Bond Legislation"). We have examined the law and such certified copies of proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon the representations of the Issuer contained in the Bond Legislation and in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and a political subdivision of the State of West Virginia with full power to adopt and enact the Bond Legislation, perform the agreements on its part contained therein and issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Bond Legislation has been duly and effectively adopted and enacted by the Issuer and constitutes a valid and binding obligation of the Issuer enforceable upon the Issuer.
3. Pursuant to the Act, the Bond Legislation creates a valid lien on the funds pledged by the Bond Legislation for the security of the Bonds, on a parity with the Issuer's Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds").

4. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding special obligations of the Issuer, payable solely from the sources provided therefor in the Bond Legislation.

5. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

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

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Bond Legislation and the liens and pledges set forth therein may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that the enforcement thereof may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,


STEPHENS & JOHNSON PLLC

LAW OFFICE

Thomas R. Michael
ATTORNEY AT LAW
P.O. BOX 250
LOST CREEK, WEST VIRGINIA, 26385-0250

PHONE 304-745-5904

FAX 304-745-5907

EMAIL tom_michael@yahoo.com

October 19, 2009

Birch River Public Service District
Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

Birch River Public Service District
Birch River, West Virginia

United States Department of Agriculture
Beckley, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to Birch River Public Service District, a public service district in Braxton, Nicholas and Clay Counties, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a resolution of the Issuer duly adopted October 15, 2009 (the "Resolution"), other documents and papers relating to the Issuer and the above-captioned Bonds of the Issuer (the "Bonds") and documents and orders of The County Commission of Nicholas County relating to the creation of the Issuer and the appointment of members of the Public Service Board of the Issuer. All capitalized terms used in the Resolution and not otherwise defined herein shall have the same meanings as defined in the Resolution when used herein.

I am of the opinion that:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and political subdivision of the State of West Virginia.
2. The members and officers of the Public Service Board of the Issuer have been duly, lawfully and properly appointed and elected, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

3. The Resolution has been duly adopted by the Issuer and is in full force and effect.

4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Resolution, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

5. All permits, licenses, approvals, consents, certificates, orders, exemptions and authorizations necessary for the due creation and valid existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges have been entered and/or received, including, without limitation, all requisite orders, certificates, consents and approvals from The County Commission of Nicholas County and the Public Service Commission of West Virginia, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has duly published a notice of the acquisition and construction of the Project, the issuance of the Bonds and related matters, as required under Chapter 16, Article 13A, Section 25 of the West Virginia Code of 1931, as amended, and has duly complied with the provisions thereof.

6. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds or the Resolution, the acquisition and construction of the Project, the operation of the System, or the validity of the Bonds, or the collection or pledge of the Net Revenues therefor.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas R. Michael".

THOMAS R. MICHAEL, ESQUIRE

02.16.09
073720.00001

CH4909779.1

BIRCH RIVER PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

COMBINED CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. AUTHORIZATION AND AWARD OF BONDS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES, ETC.
6. CERTIFICATION OF COPIES OF DOCUMENTS
7. INCUMBENCY AND OFFICIAL NAME, ETC.
8. DELIVERY AND PAYMENT AND USE OF PROCEEDS
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS; PUBLICATION AND POSTING OF NOTICES, ETC.
11. CONTRACTORS' INSURANCE, ETC.
12. CONNECTIONS, ETC.
13. MANAGEMENT
14. CONFLICT OF INTEREST
15. PROCUREMENT OF ENGINEERING SERVICES
16. EXECUTION OF COUNTERPARTS

We, the undersigned CHAIRMAN and SECRETARY of the Public Service Board of Birch River Public Service District, in Nicholas and Clay Counties, West Virginia (the "Issuer"), and the undersigned COUNSEL for the Issuer, acting for the Issuer and in its name, hereby state and certify on this the 19th day of October, 2009, in connection with the Birch River Public Service District Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), No. AR-1, dated the date hereof, fully registered, in the principal amount of \$630,000 (the "Series 2009 A Bonds") as follows:

1. AUTHORIZATION AND AWARD OF BONDS: The undersigned are authorized to execute this certificate on behalf of the Issuer and are knowledgeable with respect to the matters set forth herein. The entire issue of the Series 2009 A Bonds have been duly awarded to the United States of America, acting by the United States Department of Agriculture, Rural Utilities Service (the "Purchaser"), pursuant to a Letter of Conditions from the Purchaser, dated June 15, 2007, and all amendments thereto, and the Resolution of the Issuer duly adopted on October 15, 2009, authorizing issuance of the Series 2009 A Bonds (the "Resolution" or "Bond Resolution"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning as defined in the Bond Resolution when used herein. The Series 2009 A Bonds are being issued on this date to (i) finance a portion of the cost associated with the acquisition and construction of the Project, and (ii) pay certain costs associated with the cost of issuance and related costs not otherwise provided for.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance and delivery of the Series 2009 A Bonds or receipt of any grant monies, if any, committed for the System, hereinafter defined; nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Series 2009 A Bonds; nor in any way questioning or affecting the validity of the grants, if any, committed for the System or the validity of the Series 2009 A Bonds or any provisions made or authorized for the payment thereof, including, without limitation, the pledge or application of any monies or security therefor; nor questioning the existence, powers or proceedings of the Issuer or its Public Service Board (the "Governing Body") or the title of the members and officers thereof to their respective offices; nor questioning the operation of the System or the acquisition and construction of the Project, a portion of the cost of which is being financed out of the proceeds of sale of the Series 2009 A Bonds; nor questioning the rates and charges provided for services of the System.

3. GOVERNMENTAL APPROVALS: All applicable and necessary approvals, permits, authorizations, registrations, exemptions, consents and certificates required by law for 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 2009 A Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project were solicited in accordance with Chapter 5, Article 22, Section 1 of the Official West Virginia Code of 1931, as amended, which bids remain in full force and effect.

The Issuer has received a Recommended Decision of the Public Service Commission of West Virginia (the "PSC") entered on February 13, 2009, in Case No. 08-1895-PWD-CN, which became a Final Order on March 5, 2009, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Final Order has expired prior to the date hereof without any appeal. Such Final Order remains in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval by the Purchaser of a loan to assist in the acquisition and construction of the Project.

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds as to liens, pledge and source of and security for payment, and in all respects, being the Issuer's Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds"). Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which rank prior to or on a parity with the Series 2009 A Bonds as to liens, pledge and/or service of and security for payment.

The Issuer is not in default under the terms of the Prior Bonds or the resolutions authorizing issuance of the Prior Bonds or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of Parity Bonds or has obtained a sufficient and valid consent or waiver thereof.

5. SIGNATURES, ETC.: The undersigned Chairman and Secretary did, for the Issuer on the date hereof, officially execute and seal the Series 2009 A Bonds with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures and said officers are the duly elected or appointed (as applicable), qualified and serving officers as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Series 2009 A Bonds for the Issuer.

6. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

Bond Resolution

Prior Bond Resolutions

Consent of USDA to Issuance of Parity Bonds

USDA Letter of Conditions, with all amendments

Public Service Commission Order(s)

County Commission Orders on Creation of District

County Commission Orders of Appointment of Current Board Members

Oaths of Office of Current Board Members

Rules of Procedure

Minutes of Current Year Organizational Meeting

Minutes on Adoption of Bond Resolution

United States Department of Agriculture Loan Agreement

United States Department of Agriculture Grant Agreement

Evidence of Abandoned Mine Lands grant

7. INCUMBENCY AND OFFICIAL NAME, ETC.: The proper corporate title of the Issuer is "Birch River Public Service District" and its principal office and place of business are in Nicholas County, West Virginia. The Issuer is a public service district and public corporation and political subdivision of the State of West Virginia. The governing body of the Issuer is its Public Service

Board consisting of three duly appointed, qualified and acting members, whose names and dates of commencement and termination of current terms of office are as follows:

Name	Date of Commencement of Office	Date of Termination of Office
Mike Davis	January 7, 2009	May 24, 2014
Libby Coffman	October 26, 2004	October 26, 2010
T.G. Griffith	May 24, 2006	May 24, 2012

The names of the duly elected, appointed, qualified and acting officers of said Public Service Board of said Issuer for the calendar year 2009 are as follows:

Chairman	–	Mike Davis
Secretary	–	T.G. Griffith
Treasure	–	Libby Coffman

The duly appointed and acting Attorney for the Issuer is Thomas Michael, Esquire, of Lost Creek, West Virginia.

8. DELIVERY AND PAYMENT AND USE OF PROCEEDS: On the date hereof, the Series 2009 A Bonds were delivered to the Purchaser at Birch River, West Virginia, by the undersigned Chairman for the purposes set forth herein, and at the time of such delivery, the Series 2009 A Bonds have been duly and fully executed and sealed on behalf of the Issuer in accordance with the Resolution.

At the time of delivery of the Series 2009 A Bonds, the undersigned Chairman received \$249,167.61, being a portion of the principal amount of the Series 2009 A Bonds. Further advances of the balance of the principal amount of the Series 2009 A Bonds will be paid to the Issuer as acquisition and construction of the Project progresses.

The Series 2009 A Bonds are dated the date hereof, and interest on advances of the principal thereof at the rate of 4.125% per annum is payable from the date of each respective advance.

The Series 2009 A Bonds and the entire proceeds thereof will be used for the purposes herein set forth and for no other purposes.

9. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition, construction, operation and maintenance of the Project and the System have been acquired or can and will be acquired by purchase, or if necessary, by condemnation

by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Series 2009 A Bonds.

10. MEETINGS; PUBLICATION AND POSTING OF NOTICES, ETC.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the acquisition, construction, operation and financing of the Project and the System were authorized or adopted at meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including particularly and without limitation, Chapter 6, Article 9A of the official West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed (as applicable), qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

11. CONTRACTORS' INSURANCE, ETC.: All contractors will be required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions and Commitment of the Purchaser, as amended, and the Resolution.

12. CONNECTIONS, ETC.: The Issuer will serve at least 450 bona fide users with the System upon the completion of the Project, in full compliance with the requirements and conditions of the Purchaser.

13. MANAGEMENT: The Issuer has heretofore delivered to the Purchaser a plan concerning operation and management of the System, which plan was found to be acceptable by the Purchaser.

14. CONFLICT OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Series 2009 A Bonds, the Bond Resolution and/or the Project, including, without limitation, with respect to the Depository Bank, as defined in the Bond Resolution. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

15. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

16. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

WITNESS our signatures and the official corporate seal of BIRCH RIVER PUBLIC SERVICE DISTRICT on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Curtis E. Davis

Chairman

JH Huffin

Secretary

Thomas Q. Michael

Attorney for Issuer

10.01.09
073720.00001

BIRCH RIVER PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

ENGINEER'S CERTIFICATE

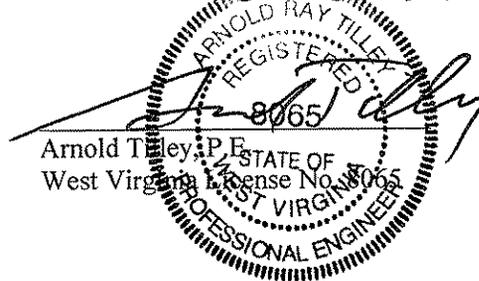
I, Arnold Tilley, Registered Professional Engineer, West Virginia License No. 8065, of E.L. Robinson Engineering Company, Beckley, West Virginia, hereby certify that my firm is the engineer for the acquisition and construction of certain additions, improvements and extensions (the "Project") to the existing waterworks system (the "System") of Birch River Public Service District (the "Issuer"), to be acquired and constructed in Nicholas and Clay Counties, West Virginia, which acquisition and construction are being financed in whole or in part by the above-captioned bonds of the Issuer.

I further certify that the Project will, to the best of my knowledge, be constructed in accordance with plans and specifications prepared by my firm and that the System and the Project are situate wholly or chiefly within the boundaries of the Issuer.

I further certify that the Project is adequate for the purpose for which it was designed and that the necessary governmental approvals, consents, authorizations, certificates and permits for the acquisition and construction thereof have been obtained.

WITNESS my signature on this 19th day of October, 2009.

E.L. Robinson Engineering Company



**BIRCH RIVER PSD
SCHEDULE B**

A. COST OF PROJECT	TOTAL	AML	Total Minus AML	USDA/RUS
1 Construction	4,441,962.70	3,052,811.83	1,389,150.87	1,389,150.87
a Contract One	3,377,366.15	2,838,355.83	539,010.32	539,010.32
b. Contract Two	740,862.90	0.00	740,862.90	740,862.90
c. Contract Three	243,700.00	214,456.00	29,244.00	29,244.00
f. Construction Contingency	80,033.65	0.00	80,033.65	80,033.65
2 Technical Services - E. L. Robinson	395,000.00	0.00	395,000.00	395,000.00
a. Preliminary	20,000.00	0.00	20,000.00	20,000.00
b. Basic	225,000.00	0.00	225,000.00	225,000.00
c. Inspection	130,000.00	0.00	130,000.00	130,000.00
d. Additional Services	20,000.00	0.00	20,000.00	20,000.00
3 Capitalized Interest	51,125.00	0.00	51,125.00	51,125.00
4 Project Contingency	34,300.13	0.00	34,300.13	34,300.13
5 Legal	25,000.00	0.00	25,000.00	25,000.00
6 Permits and Legal Ads	5,000.00	0.00	5,000.00	5,000.00
7 Technical Services - Administrative	40,000.00	0.00	40,000.00	40,000.00
8 Accounting	7,500.00	0.00	7,500.00	7,500.00
9 Lands & ROWs	20,000.00	0.00	20,000.00	20,000.00
10 Bond Counsel	15,000.00	0.00	15,000.00	15,000.00
11 TOTAL of Lines 1 through 10	5,034,887.83	3,052,811.83	1,982,076.00	1,982,076.00

Curtis & Davis
Birch River PSD

10/15/09

E. L. Robinson
E. L. Robinson

10/15/09

STATE OF WEST VIRGINIA,
COUNTY OF NICHOLAS, ss:

IN THE COUNTY COMMISSION THEREOF

A MOTION BY THE NICHOLAS COUNTY COMMISSION
TO CREATE THE BIRCH RIVER PUBLIC SERVICE DISTRICT

WHEREAS, the County Commission of Nicholas County, West Virginia, has determined that it is of great importance to provide the citizens of the Birch River area and environs with potable water; and,

WHEREAS, some residents of the Birch River area and environs, all legal voters, have been before the County Commission to seek provision of said service; and,

WHEREAS, the need for the provision of potable water in the Birch River area has been demonstrated to be a badly needed service; and,

WHEREAS, in order to facilitate the creation of this Public Service District, the Nicholas County Commission has elected to forego the petition of residents and create the Public Service District by its own motion; and,

WHEREAS, since there is no city, incorporated town, or other municipality within the said district, it is provided by said Article 13A of Chapter 16 of the Code of West Virginia that the County Commission has the powers to create this District; and,

WHEREAS, a public hearing shall be held May 16, 1978, at 7:30 PM in the Birch River School for the purpose of hearing all arguments, pro and con, on the Commission's motion; and,

WHEREAS, all requirements of Article 13A of Chapter 16 of the Code of West Virginia with respect to the public hearing will be met; and,

NOW, THEREFORE, a motion to create the Birch River Public Service District is made this 5th day of April, 1978, by Commissioner Bob M. O'Dell and seconded by Commissioner Hazel Taylor.

B. M. O'Dell
President

Hazel E. Taylor
Commissioner

Neil E. Hewitt
Commissioner

BOOK 025 PAGE 205

CERTIFIED A TRUE COPY.
Attest [Signature]
By [Signature] Clerk
Denun

NOTICE OF PUBLIC HEARING
ON CREATION OF
BIRCH RIVER PUBLIC SERVICE DISTRICT

Notice is hereby given that by motion of the Nicholas County Commission, an order duly adopted by said Commission has been filed with the Clerk of the County Commission of Nicholas County, West Virginia, for the creation of a public service district within Nicholas County for the purpose of constructing or acquiring by purchase or otherwise and the maintenance, operation, improvement, and extension of public service properties supplying water services within said district and also outside said district to the extent permitted by law, to be named "Birch River Public Service District", and having the following described boundaries:

Beginning at a point, at the Mouth of Little Birch River, on the Division Line between Braxton County and Nicholas County, located at Latitude $38^{\circ} 33' 28''$ and Longitude $80^{\circ} 47' 06''$, thence leaving the Mouth of Little Birch River and with said Division Line S $70^{\circ} 15' E$ 1,700 feet to a point on top of a ridge on said Division Line, located at Latitude $38^{\circ} 33' 22''$ and Longitude $80^{\circ} 46' 45''$, thence continuing with the meanders of said ridge and Division Line South East at approximately 34,700 feet crossing West Vir-

ginia State Route #19, in all 57,700 feet to a point on a ridge, located at Latitude $38^{\circ} 31' 36''$ and Longitude $80^{\circ} 39' 04''$, a corner to Braxton, Webster, and Nicholas County, thence leaving Braxton County and with the Division Line between Webster County and Nicholas County S $43^{\circ} 05' W$ at 6,900 feet crossing Road fork, at 10,950 feet crossing West Virginia State Route #1, in all 11,250 feet to a point at the Mouth of Skyles Creek, located at Latitude $38^{\circ} 30' 14''$ and Longitude $80^{\circ} 40' 41''$, thence leaving the Mouth of Skyles Creek and continuing with the Division Line between Nicholas County and Webster County S $20^{\circ} 00' E$ at 2,500 feet crossing Birch River, at 5,500 feet crossing Rich Fork, in all 19,000 feet to a point on top of a ridge on said Division Line, located at Latitude $38^{\circ} 27' 18''$ and Longitude $80^{\circ} 39' 19''$, thence leaving the Division Line and Webster County and through the interior of Nicholas County for seven (7) lines, S $71^{\circ} 45' W$ at 3,300 feet crossing Poplar Creek, at 8,500 feet crossing Panther Lick Branch, in all 12,100 feet to a point on a high knob, located at Latitude $38^{\circ} 26' 40''$ and Longitude $80^{\circ} 41' 43''$, thence S $9^{\circ} 20' W$ at 2,000 feet crossing Road Fork, in all 4,900 feet to a point on a high knob, located at Latitude $38^{\circ} 25' 52''$ and Longitude $80^{\circ} 41' 54''$, thence S $74^{\circ} 30' W$ at 4,050 feet crossing Rockhouse Run, in all 6,400 feet to a point on a high knob located at Latitude $38^{\circ} 25' 35''$ and Longitude $80^{\circ} 43' 12''$, thence

N $32^{\circ} 45'$ W 4,500 feet to a point on a ridge, located at Latitude $38^{\circ} 26' 10''$ and Longitude $80^{\circ} 43' 40''$, thence N $86^{\circ} 00'$ W at 7,200 feet and at 10,000 feet crossing a tributary of Tug Fork, in all 12,700 feet to a point, on a ridge located at Latitude $38^{\circ} 26' 20''$ and Longitude $80^{\circ} 46' 19''$, S $50^{\circ} 45'$ W at 4,700 feet crossing West Virginia State Route #19, in all 13,500 feet to a point in West Virginia Secondary Route #19/26, located at Latitude $38^{\circ} 24' 55''$ and Longitude $80^{\circ} 48' 29''$, thence with West Virginia Secondary Route #19/26 North West approximately 26,000 feet to a point in center line of West Virginia Secondary Route #19/26 on the Division Line between Nicholas County and Clay County, located at Latitude $38^{\circ} 27' 22''$ and Longitude $80^{\circ} 52' 56''$, thence leaving West Virginia Secondary Route #19/26 and with said Division Line between Nicholas and Clay County, S $48^{\circ} 45'$ W at 3,300 feet crossing a tributary of Phesant Run, in all 5,300 feet to a point on a ridge on said Division Line, located at Latitude $38^{\circ} 26' 48''$ and Longitude $80^{\circ} 51' 47''$, thence leaving said Division Line and through the interior of Clay County for two (2) lines, N $57^{\circ} 45'$ W 5,900 feet to a point on hillside above Buffalo Creek near Widen, West Virginia, located at Latitude $38^{\circ} 27' 21''$ and Longitude $80^{\circ} 52' 51''$, thence due North at 700 feet crossing West Virginia Secondary Route #15/4, at 7,000 feet crossing West Virginia State Route #11, at 9,000

feet crossing 500 feet right of the Pond Ridge Lookout Tower, at 13,650 feet crossing Groves Creek, in all 18,700 feet to a point, located at Latitude $38^{\circ} 30' 25''$ and Longitude $80^{\circ} 52' 53''$, corner to Nicholas, Clay, and Braxton Counties, thence leaving Clay County and with the Division Line between Nicholas and Braxton County, N $55^{\circ} 45'$ E at 15,600 feet crossing Strange Creek at 24,200 feet crossing Wolf Pen Run, in all 32,900 feet to the beginning.

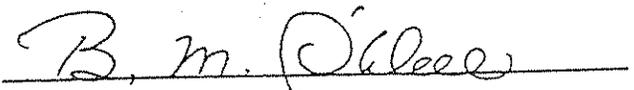
Containing an area of approximately 78.6 miles and the communities of Birch River within Nicholas County and Widen and Dille in Clay County, West Virginia, as shown upon a map, which said map is available for public inspection in the office of the Clerk of the County Commission of Nicholas County, in Summersville, West Virginia.

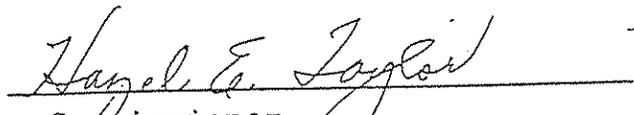
All persons residing in or owning or having any interest in property in said proposed public service district are hereby notified that the County Commission of Nicholas County will conduct a public hearing on the 16th day of May, 1978, at 7:30 PM at the Birch River Grade School at Birch River, Nicholas County, West Virginia, at which time and place all interested persons may appear before the County Commission and shall have an opportunity to be heard for and against the creation of the proposed public service district.

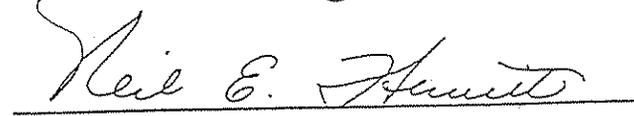
By order of the County Commission this 5th day
of April, 1978.


County Commission Clerk

Adopted by the County Commission this 5th day of
April, 1978.


President

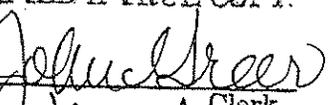
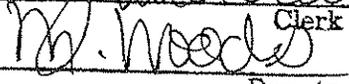

Commissioner


Commissioner

Attest:

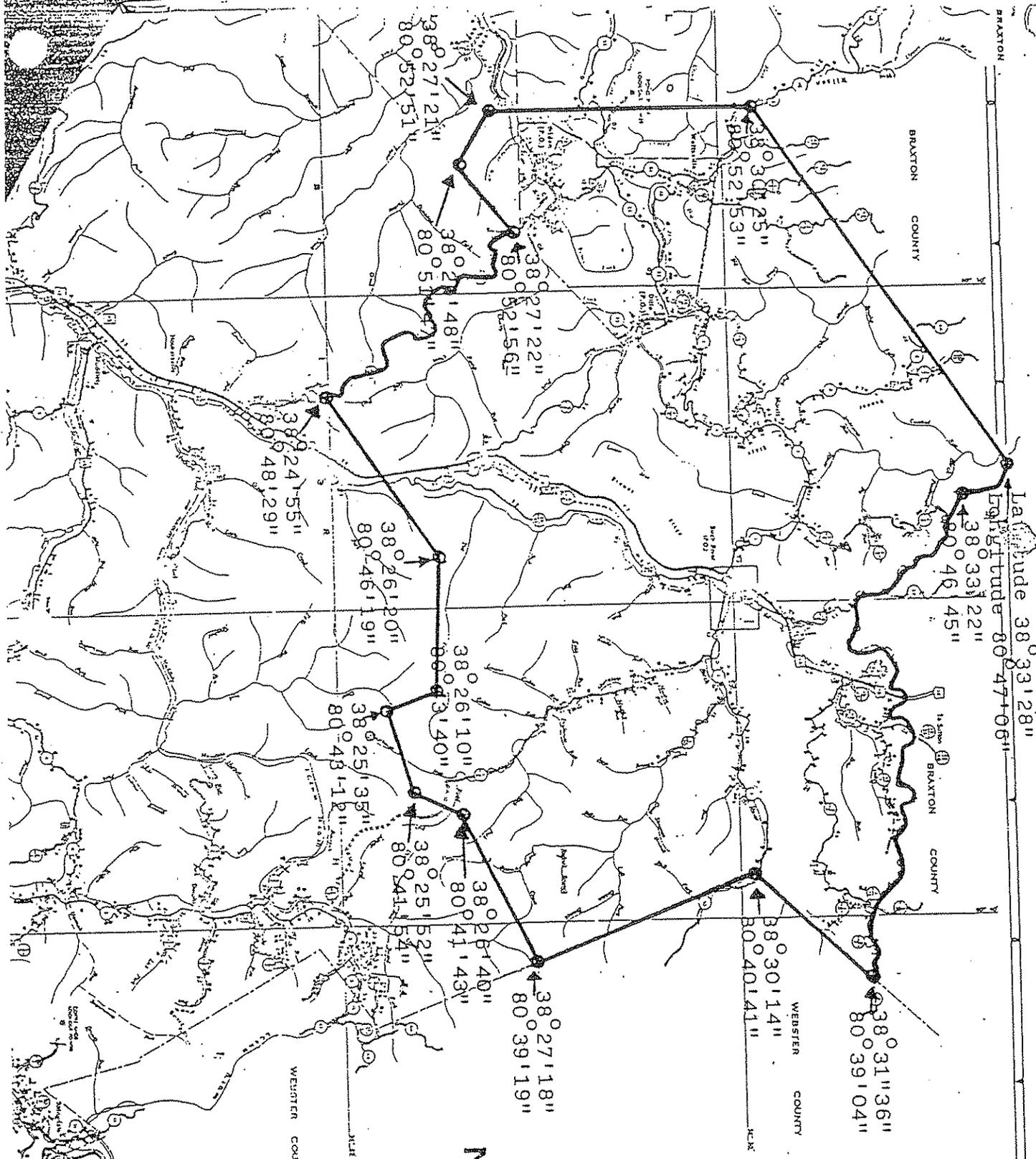
Clerk

~~STATE OF WEST VIRGINIA
Nicholas County Commission Office 19
This _____ was this day presented
in said office and all reasons together with the
certificate thereto annexed is admitted to record.~~

CERTIFIED A TRUE COPY:
Attest 
Clerk
By 
Deputy

~~Teste _____ Clerk~~

DIRCH RIVER PUBLIC SERVICE DISTRICT



GENERAL HIGHWAY
NICHOLAS C
WEST VIRG

WEST VIRGINIA DEPT. OF TRANSPORTATION
 IN COOPERATION WITH
 U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 JANUARY 1973

1:50,000
 1:50,000
 1:50,000
 1:50,000

STATE OF WEST VIRGINIA,
COUNTY OF NICHOLAS, ss:

IN THE COUNTY COMMISSION THEREOF

ORDER CREATING
BIRCH RIVER PUBLIC SERVICE DISTRICT
IN NICHOLAS COUNTY, WEST VIRGINIA

Whereas, the County Commission of Nicholas County, West Virginia, did heretofore fix a date for a public hearing on the creation of the proposed Birch River Public Service District, and in and by notice published, provide that all persons residing in or owning or having any interest in property in the proposed public service district might appear before the County Commission at this meeting and have the opportunity to be heard for and against the creation of said district; and,

Whereas, notice of this hearing was duly given in the manner provided and required by said order and by Article 13A of Chapter 16 of the West Virginia Code, and all interested parties having been afforded an opportunity of being heard for and against the creation of said district, but no written protest has been filed by the requisite number of qualified voters registered and residing within said public service district and said County Commission has given due consideration to all matters for which such hearing was offered; and,

9C

Whereas, it is now deemed desirable by the said County Commission to enter an order creating said district:

NOW, THEREFORE, IT IS ORDERED by the County Commission of Nicholas County, West Virginia, as follows:

Section 1. That a public service district within Nicholas County, West Virginia, is hereby created and said district shall have the following boundaries:

Beginning at a point, at the mouth of Little Birch River, on the Division Line between Braxton and Nicholas County, located at Latitude $38^{\circ} 33' 28''$ and Longitude $80^{\circ} 47' 06''$, thence leaving the mouth of Little Birch River and with said Division Line S $70^{\circ} 15'$ E 1,700 feet to a point on top of a ridge on said Division Line located at Latitude $38^{\circ} 33' 22''$ and Longitude $80^{\circ} 46' 45''$, thence continuing with the meanders of said ridge and Division Line southeast at approximately 34,700 feet crossing West Virginia State Route #19, in all 57,700 feet to a point on a ridge located at Latitude $38^{\circ} 31' 36''$ and Longitude $80^{\circ} 39' 04''$, a corner to Braxton, Webster and Nicholas counties, thence leaving Braxton County and with the Division Line between Webster and Nicholas County S $43^{\circ} 05' W$ at 6,900 feet crossing Road Fork, at 10,950 feet crossing W. Va. State Route #1, in all 11,250 feet to a point at the mouth of Skyles Creek, located a Latitude $38^{\circ} 30' 14''$ and Longitude $80^{\circ} 40' 41''$, thence leaving the mouth of Skyles Creek and continuing with the Division Line between Nicholas and Webster County S $20^{\circ} 00' E$ at 2,500 feet crossing Birch River, at 5,500 feet crossing Rich Fork, in all 19,000 feet to a point on top of a ridge on said Division Line, located at Latitude $38^{\circ} 27' 18''$ and

Longitude $80^{\circ} 39' 19''$, thence leaving the Division Line and Webster County and through the interior of Nicholas County for seven (7) lines S $71^{\circ} 45' W$ at 3,300 feet crossing Poplar Creek, at 8,500 feet crossing Panther Lick Branch, in all 12,100 feet to a point on a high knob, located at Latitude $38^{\circ} 26' 40''$ and Longitude $80^{\circ} 41' 43''$, thence S $9^{\circ} 20' W$ at 2,000 feet crossing Road Fork in all 4,900 feet to a point on a high knob, located at Latitude $38^{\circ} 25' 52''$ and Longitude $80^{\circ} 41' 54''$. thence S $74^{\circ} 30' W$ at 4,050 feet crossing Rockhouse Run, in all 6,400 feet to a point on a high knob located at Latitude $38^{\circ} 25' 35''$ and Longitude $80^{\circ} 43' 12''$. thence N $32^{\circ} 45' W$ 4,500 feet to a point on a ridge, located at Latitude $38^{\circ} 26' 10''$ and Longitude $80^{\circ} 43' 40''$, thence N $86^{\circ} 00' W$ at 7,200 feet and at 10,000 feet crossing a tributary of Tug Fork, in all 12,700 feet to a point, on a ridge located at Latitude $38^{\circ} 26' 20''$ and Longitude $80^{\circ} 46' 19''$, thence S $50^{\circ} 45' W$ at 4,700 feet crossing West Virginia State Route #19, in all 13,500 feet to a point on West Virginia Secondary Route #19/26, located at Latitude $38^{\circ} 24' 55''$ and Longitude $80^{\circ} 48' 29''$, thence with West Virginia Secondary Route #19/26 North West approximately 26,000 feet to a point in center line of West Virginia Secondary Route #19/26 on the Division Line between Nicholas and Clay counties, located at Latitude $38^{\circ} 27' 22''$ and Longitude $80^{\circ} 52' 56''$, thence leaving West Virginia Secondary Route #19/26 and with said Division Line between Nicholas and Clay counties S $48^{\circ} 45' W$ at 3,300 feet crossing a tributary of Pheasant Run, in all 5,300 feet to a point on a ridge on said Division Line located at Latitude $38^{\circ} 26' 48''$ and Longitude $80^{\circ} 51' 47''$, thence leaving said Division Line and through the interior of Clay County for two (2) lines, N $57^{\circ} 45' W$ 5,900 feet to a point on a hillside above Buffalo Creek near Widen, West Virginia, located at Latitude

38° 27' 21" and Longitude 80° 52' 51", thence due North at 700 feet crossing West Virginia Secondary Route #15/4, at 7,000 feet crossing West Virginia State Route #11, at 9,000 feet crossing 500 feet right of the Pond Ridge Lookout Tower, at 13,650 feet crossing Groves Creek, in all 18,700 feet to a point, located at Latitude 38° 30' 25" and Longitude 80° 52' 53", corner to Nicholas, Clay and Braxton counties, thence N 55° 45' E at 15,600 feet crossing Strange Creek at 24,200 feet crossing Wolf Pen Run, in all 32,900 feet to the beginning.

Containing an area of approximately 78.6 square miles, 50,304 square acres, and the communities of Birch River, Widen and Dille, the first in Nicholas County, the last two in Clay County, State of West Virginia.

Section 2. That said public service district so created shall have the name and corporate title of " Birch River Public Service District" and shall constitute a public corporation and political sub-division of the State of West Virginia, having all of the rights and powers conferred on a public service district by the laws of the State of West Virginia, and particularly Article 13A of Chapter 16 of the West Virginia Code.

Section 3. That the County Commission of Nicholas County West Virginia, has determined that the territory within Nicholas and Clay counties, West Virginia, having the above described boundaries is so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying water services within such territory by said public service district shall be conducive to the preservation of public health, comfort, and convenience of said area.

Given under our hands this the _____ day of _____, 1978

B. M. O'Connell

President

Hazel E. Taylor
Commissioner

Commissioner

CERTIFIED A TRUE COPY:

Attest J. M. Heer
Clerk

By [Signature]
Deputy

O R D E R
ENLARGING BIRCH RIVER PUBLIC SERVICE DISTRICT
IN NICHOLAS COUNTY AND IN BRAXTON COUNTY,
WEST VIRGINIA

Whereas, the County Commission of Nicholas County, West Virginia, did heretofore by an Order adopted on the 20 day of December, 1995, fix a date for a public hearing on the enlargement of the proposed Birch River Public Service District and in and by said Order provide that all persons residing in or owning or having any interest in property in the proposed enlarged public service district might appear before the County Commission at this meeting and have the opportunity to be heard for and against the enlargement of said district; and,

Whereas, notice of this hearing was duly given in the manner provided and required by said Order and by Article 13A of Chapter 16 of the West Virginia Code, and all interested persons have been afforded an opportunity of being heard for and against the enlargement of said district, but no written protest has been filed by the requisite number of qualified voters registered and residing within said proposed public service district and said County Commission has given due consideration to all matters for which such hearing was offered; and,

Whereas, it is now deemed desirable by said County Commission to adopt an Order enlarging said district;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AND ORDERED by the County Commission of Nicholas County, West Virginia, as follows:

Section 1. That a public service district within Nicholas County, West Virginia, is hereby enlarged, and said district shall be further bounded and described as follows:

The lands to be transferred are described as follows:

Beginning at a point on US Route 19, in the boundary line of Braxton and Nicholas Counties, West Virginia, near West Virginia State Plane South Zone Coordinates 2,079,550 N, 558,850 E;

thence, N 23° 24' E, approximately 3,000 feet, to a high point on the ridge line between Mill Fork and an unnamed tributary;

thence, N 45° 46' E, approximately 2,750 feet, to a high point between two unnamed tributaries of Mill Fork,

thence, N 38° 49' E, approximately 4,150 feet, to a high

point between County Route 19/34 and County Route 19/40;

thence, N 88° 23' E, approximately 4,050 feet to a high point on the ridge line between Spring Run and an unnamed tributary to Carpenter Fork;

thence, along the ridge line between Carpenter Fork and Spring Run to a point at the head waters of Carpenter Fork, S 52° 39' E, approximately 5,300 feet;

thence, continuing along the same ridge line, now being the ridge line between Ramp Run and an unnamed tributary to Carpenter Fork, to a high point in the boundary line of Braxton and Nicholas Counties, S 19° 10' E, approximately 5,150 feet.

thence, along said boundary line N 89° 49' W approximately 15,750 feet, to a point on US Route 19, being the Point of Beginning,

containing 2050 acres more or less in Nicholas and Braxton Counties, West Virginia.

Section 2. That said enlarged district shall continue under the corporate name of the Birch River Public Service District and shall continue to constitute a public corporation and political subdivision of the State of West Virginia, having all of the rights and powers conferred on public service districts by the laws of the State of West Virginia and particularly Article 13A of Chapter 16 of the West Virginia Code.

Section 3. That the County Commission of Nicholas County, West Virginia, has determined it is necessary, feasible and proper to include said territory in the Birch River Public Service District, and that said enlargement in all respects will be conducive to the preservation of public health, comfort and convenience of said area and meets the requirements of §16-13A-3.

Adopted by the County Commission of Nicholas County, West Virginia on this 17 day of January, 1996.

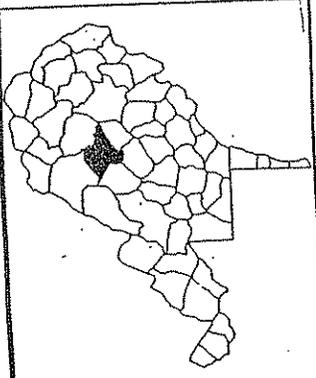
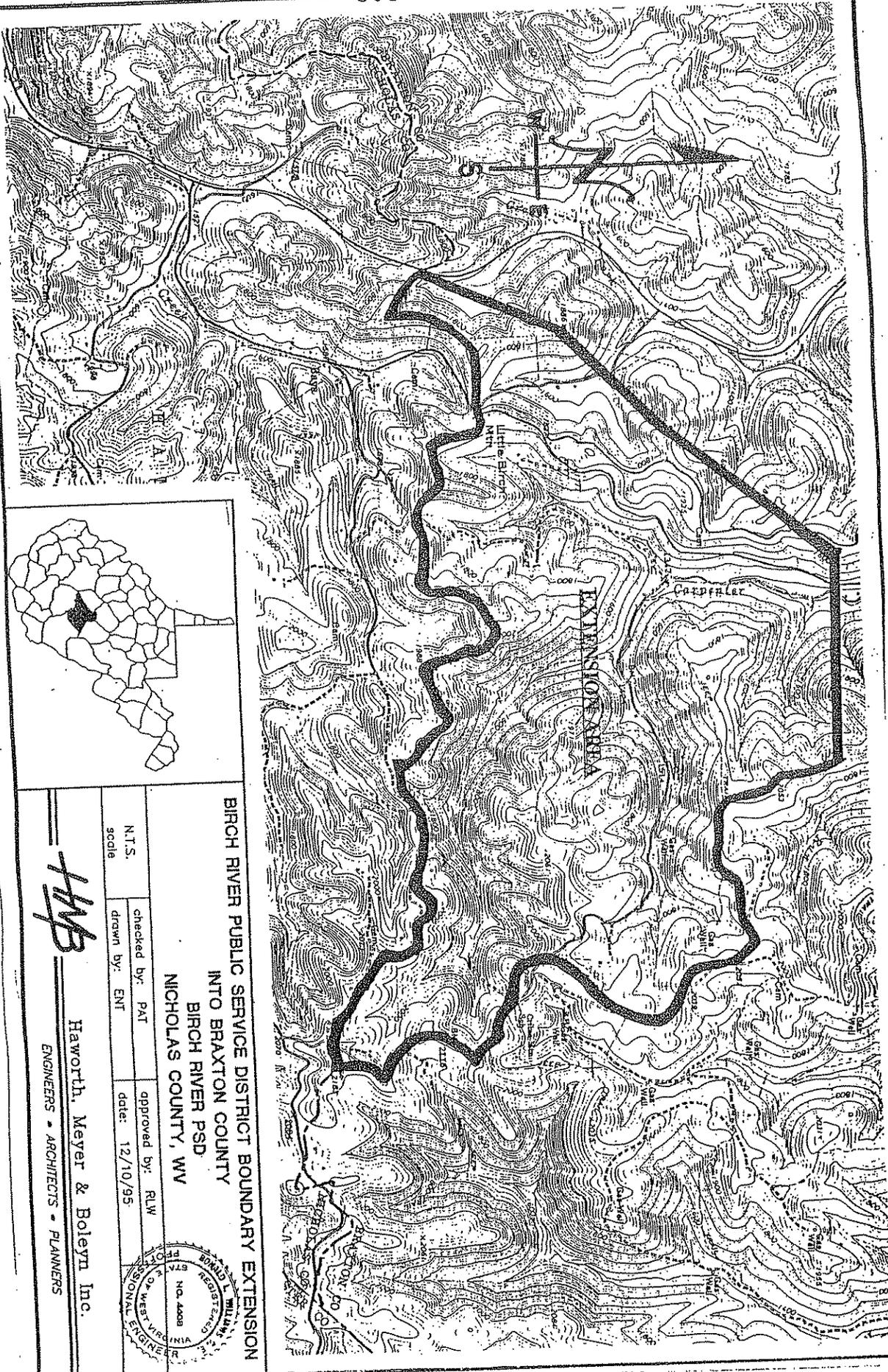
Spurgeon Hinkle
Spurgeon Hinkle, President
Lloyd G. Paxton
Lloyd G. Paxton, Commissioner
Birl O'Dell
Birl O'Dell, Commissioner

ATTEST:

John Greer
John Greer, Clerk

CERTIFIED A TRUE COPY:

Attest *John Greer*
Clerk
By *[Signature]*
Deputy



BIRCH RIVER PUBLIC SERVICE DISTRICT BOUNDARY EXTENSION
 INTO BRAXTON COUNTY
 BIRCH RIVER PSD
 NICHOLAS COUNTY, WV

N.T.S. scale	checked by: PAT	approved by: RLW
	drawn by: ENT	date: 12/10/95

HMB

Haworth, Meyer & Boleyn Inc.
 ENGINEERS • ARCHITECTS • PLANNERS



BEFORE THE COUNTY COMMISSION OF BRAXTON COUNTY, WEST VIRGINIA

REGULATORY ORDER 96-1

REDUCING THE TERRITORY OF
THE FLATWOODS-CANOE RUN PUBLIC SERVICE DISTRICT
TO EXCLUDE THE CARPENTER'S FORK AREA AS TO WATER SERVICE.

Upon motion of Commissioner Wright, with second by
Commissioner Nottingham, the following order is unanimously
made this 2nd day of February, 1996.

WHEREAS, the Flatwoods - Canoe Run Public Service
District has not extended water service to that portion of its
territory hereafter described, and

WHEREAS, there is a necessity for water service within
the territory included in the Flatwoods - Canoe Run Public Service
District hereafter described, and

WHEREAS, it is not economically feasible for the
Flatwoods - Canoe Run Public Service District to extend water
service to that area, and

WHEREAS, it appears there may be funding available to
the Birch River Public Service District to construct a water line
through that area in order to connect its proposed system to the
Flatwoods - Canoe Run Public Service District system for the
purpose of acquiring a water supply, and

WHEREAS, the Birch River Public Service District has
offered to serve the area through which the proposed water line
would pass, and

WHEREAS, the extension of water service would be conducive to the preservation of public health, comfort and convenience of such area, and

WHEREAS, a public hearing was held before the County Commission on the 2nd day of February, 1996, with respect to the proposal to exclude the territory hereinafter described from the Flatwoods - Canoe Run Public Service District as to water service, and

WHEREAS, said hearing was duly advertized as required by law, and

WHEREAS, no adverse comments were received by the Commission at the public hearing.

THEREFORE, IT IS ORDERED that the territory hereinafter described is hereby removed from the Flatwoods - Canoe Run Public Service District for the purpose of providing water service, to wit:

Beginning at a point on US Route 19, in the boundary line of Braxton and Nicholas Counties, West Virginia, near West Virginia State Plane South Zone Coordinates 2,079,550 N, 558,850 E; thence, N 23 24 E, approximately 3,000 feet, to a high point on the ridge line between Mill Fork and an unnamed tributary; thence, N 45 46 E, approximately 2,750 feet, to a high point between two unnamed tributaries of Mill Fork, thence N 38 49 E, approximately 4,150 feet, to a high point between County Route 19/34 and County Route 19/40; thence, N 88 23 E, approximately 4,050 feet to a high point on the ridge line between Spring Run and an unnamed tributary to Carpenter Fork; thence, along the ridge line between Carpenter Fork and Spring Run to a point at the head waters of Carpenter Fork, S 52 39 E, approximately 5,300 feet; thence,

continuing along the same ridge line, now being the ridge line between Ramp Run and an unnamed tributary to Carpenter Fork, to a high point in the boundary line of Braxton and Nicholas Counties, S 19 10 E, approximately 5, 150 feet. thence, along said boundary line N 89 49 W approximately 15,750 feet, to a point on US Route 19, being the Point of beginning, containing 2050 acres more or less in Nicholas and Braxton Counties, West Virginia.

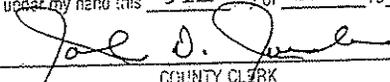

ROY HUFFMAN, President

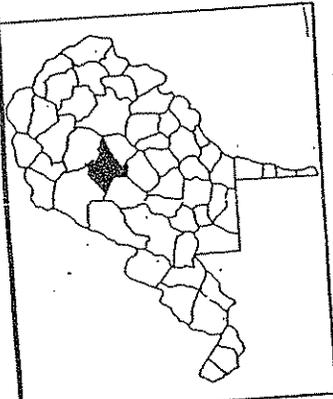
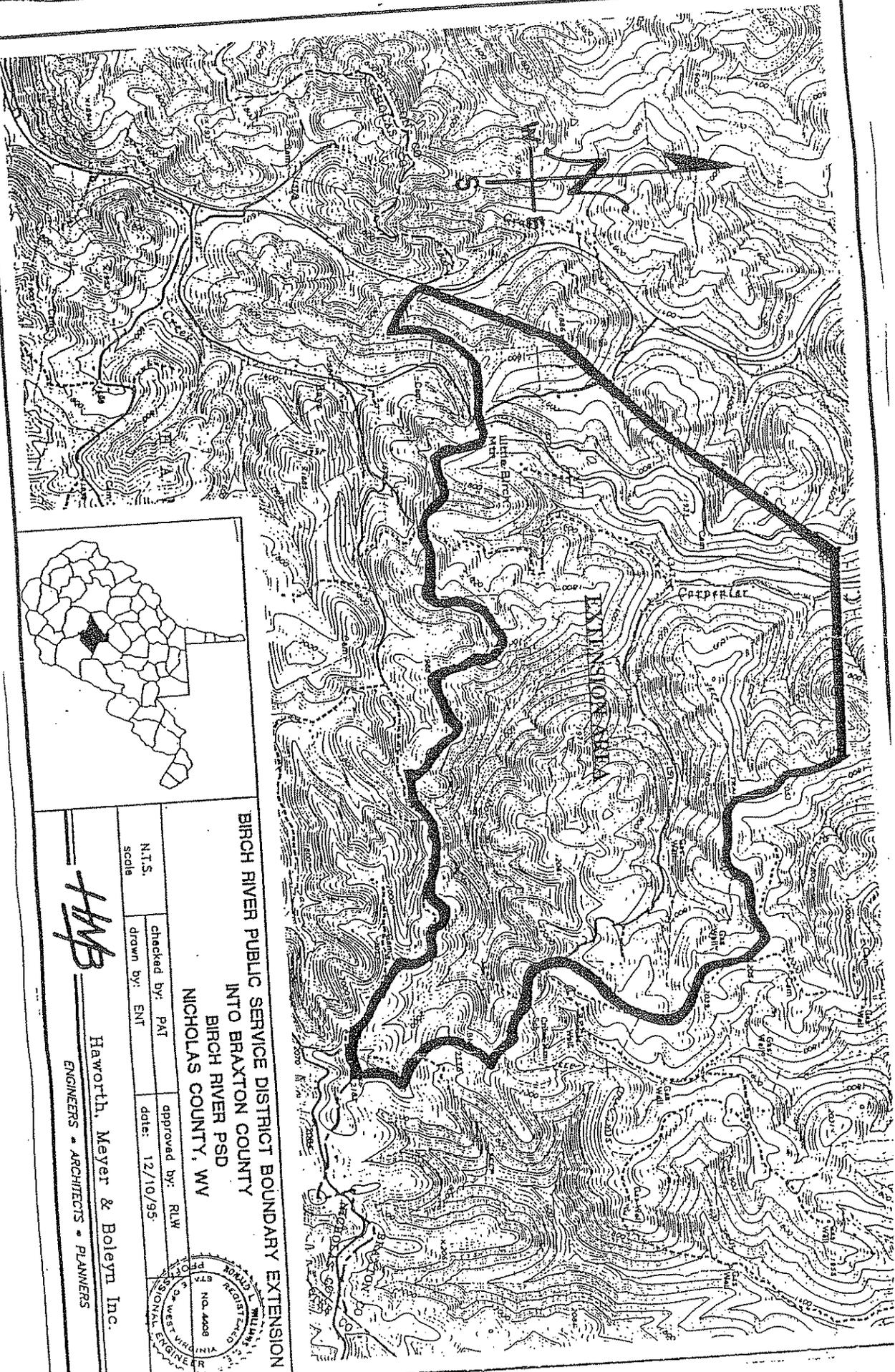
ATTEST:


JOHN DAVID JORDAN, Clerk

STATE OF WV COUNTY OF BRAXTON, to-wit:

I, John D. Jordan, County Clerk, do hereby certify that the foregoing is a true and accurate copy of the record in my office in GEN. ORDER Book No. 21 at page 232-B as taken from the records. Given under my hand this 9TH day of SEPT 1998


COUNTY CLERK

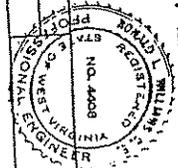


**BIRCH RIVER PUBLIC SERVICE DISTRICT BOUNDARY EXTENSION
 INTO BRAXTON COUNTY
 BIRCH RIVER PSD
 NICHOLAS COUNTY, WV**

N.T.S. Scale	checked by: PAT	approved by: RLW
	drawn by: ENT	date: 12/10/95

HMB

Haworth, Meyer & Boleyn Inc.
 ENGINEERS • ARCHITECTS • PLANNERS



PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

Entered: May 7, 1996

5-27-96

CASE NO. 96-0073-PWD-PC

BRAXTON COUNTY COMMISSION
Petition to reduce boundaries of Flatwoods-Canoe Run
Public Service District to exclude the Carpenter's
Fork area as to water service.

CASE NO. 96-0074-PWD-PC

NICHOLAS COUNTY COMMISSION
Petition to enlarge boundaries of
Birch River Public Service District.

RECOMMENDED DECISION

Case No. 96-0073-PWD-PC

On January 25, 1996, the Braxton County Commission filed with the Public Service Commission (Commission) a petition to reduce the boundaries of the Flatwoods-Canoe Run Public Service District to exclude the Carpenter's Fork area and other areas in Braxton County as to water service. Attached was an order of the Braxton County Commission, dated January 25, 1996, setting said boundary reduction for hearing.

On February 14, 1996, Staff Attorney Meyishi Blair filed the Initial Joint Staff Memorandum, with attached memorandum from William A. Nelson, Utility Financial Analyst, Public Service District Division of the Commission. Ms. Blair stated that the boundaries of the Flatwoods-Canoe Run Public Service District are to be reduced since the Birch River Public Service District is ready, willing and economically able to provide water service to the area that will be excluded. She stated that, once further information was received, a substantive memorandum would be forthcoming.

On February 23, 1996, the Braxton County Commission filed an order dated February 2, 1996, authorizing the proposed reduction of the boundaries of Flatwoods-Canoe Run Public Service District.

On February 27, 1996, the Commission, by Order, referred the matter to the Division of Administrative Law Judges (ALJ Division) for decision on or before August 21, 1996.

change was to facilitate the providing of such service. (Tr.I. 5-6¹). Mr. Toon placed into evidence as Staff Exhibit 1 the Final Staff Internal Memorandum, dated February 28, 1996, and authored by Mr. Nelson, which recommended that the boundary changes be approved. Mr. Huffman stated that he agreed with the Staff recommendation. (Tr.I. 6). Since there were several people in the hearing room, the undersigned ALJ queried whether anyone wished to make a statement of support or opposition to the boundary changes, and Willard Harper stated he objected to the planned placement of the water lines of the project that will provide water to the Carpenter's Fork area. Mr. Toon explained to Mr. Harper that his objection did not relate to the boundary changes but that Mr. Harper's objections could be presented in another case. (Tr.I. 8-9). No other member of the public made a statement. (Tr.I. 10).

At the hearing held in Summersville, no individual appeared on behalf of the Nicholas County Commission, nor did any member of the public appear. (Tr.II. 3). Mr. Toon and Mr. Nelson were present. On the day of hearing, after its adjournment, the undersigned ALJ was provided by the secretary of the Nicholas County Commission an affidavit of publication establishing that the Notice of Hearing had been published in The Nicholas Chronicle on April 11, 1996. That affidavit has been designated ALJ Exhibit 1.

On April 29, 1996, the transcripts of the hearings were filed.

DISCUSSION

The publication of the Notice of Hearing in Braxton County did not fully conform with the requirements of the Procedural Order of March 12, 1996, since the notice was published less than five days before hearing. The publication will be accepted as being in substantial compliance with the requirements of the order, however, particularly since it was clear from the presence in the hearing room of several members of the public that the public was aware of the hearing.

The undersigned ALJ has not been advised as to why no one from the Nicholas County Commission appeared at the hearing in Summersville. Nevertheless, since the public had been notified, consistent with the requirements of the March 12, 1996 order, and no one appeared in protest to the boundary changes, the lack of any participation at the hearing of the Nicholas County Commission will not be found to be fatal to approval of said changes.

¹The transcript of the hearing held in Sutton will be designated as "Tr.I." The transcript of the hearing held in Summersville will be designated as "Tr.II."

District and the expansion of the boundaries of the Birch River Public Service District be approved.

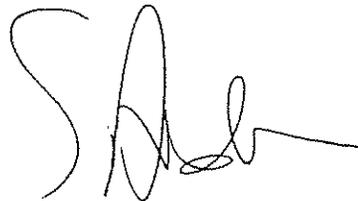
IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

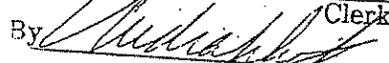
If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Sunya Anderson
Administrative Law Judge

SA:s

CERTIFIED A TRUE COPY:
Attest  Clerk
By  Deputy

BOOK 03SPC 213

MINUTES OF THE NICHOLAS COUNTY COMMISSION - MAY 17, 2006

The Nicholas County Commission met in a regular session at the Nicholas County Courthouse on Wednesday, May 17, 2006. Present were: President Tom Blankenship, Commissioner Birl O'Dell and Commissioner Spurgeon Hinkle. Also, present: Clerk Wanda Hendrickson

Representing the media – Ray Corbin

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, exoneration's as presented by the Nicholas County Assessor were reviewed and approved as presented.

Upon motion moved by Commissioner Hinkle and seconded by Commissioner O'Dell, invoices were reviewed and approved for payment.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, estate and fiduciary matters were approved as presented by the Nicholas County Clerk.

Upon motion moved by Commissioner Hinkle and seconded by Commissioner O'Dell, minutes from commission meeting May 3, 2006 were reviewed and approved as presented.

Appearing before the Commission - Prosecutor Mark Hudnall, County Clerk Wanda Hendrickson, Assessor Ernie Dennison, Circuit Clerk June Gower, Assessor Ernie Dennison, Magistrate Mike Cooper, Magistrate Clerk Laura Green, E9-1-1 and OES Director Joey DeRito and Deputy Sheriff Paul O'Dell

Mr. Hudnall noted for the record that in regard to the custodial services that the Commission is shorthanded. However he noted that it was not convenient to do custodial services during work hours. He commended Maintenance Supervisor Ken Myers for stepping in and for his willingness to beyond his normal routine, referring to assembling a desk unit for one of his assistants. His noted his staff has complained that there offices are very dirty and that its been building up to the point where they would like for him to hire an outside contractor to come in and spring clean on a weekend and have monies transferred within his budget to pay for it. Because the Commission provides everyone with these services, Mr. Hudnall first wanted to run this by the commission. His staff would like to see a full and through cleaning of the windows, window screens and blinds, flourescent light covers, heat vents and returns, carpets shampooed, bathrooms cleaned and then kept up with on a regular basis which seems to be a common complaint throughout the courthouse. In addition, the would like to see dusting and vacuuming done on a regular basis. Later, they would like to have some painting done. Mr. Hudnall noted he believed it would help morale within his office, and that the public wants to see things looking nice as well. He further suggested for the Commission to consider hiring a temporary employee to assist Mr. Myers until we see what occurs with one custodian who is currently on leave. Mr. Cooper noted that the bathrooms on the first floor of the McClung Annex is basically the public restrooms and he noted that they remain deplorable on most occasions, especially during peak times when court is in session. Mr. DeRito echoed Mr. Coopers concerns. President Blankenship expressed to the group that the Commission fully understands their concerns, noting that they can see the condition of the cleanliness of the facilities have been deteriorating for some time. He further noted that the Commission will be addressing this subject matter for the day ends. He noted that the commission is considering hiring additional people on a full time basis and that this could take some time for the advertising of the positions and the interview process. Meanwhile, the Commission will touch base with Mr. Myers and between this period of soliciting custodial service, perhaps some of the groups immediate concerns can be addressed. Mr. Cooper asked the Commission to consider when hiring that certain offices have sensitive material that may be accessible, and hiring individuals with a criminal record. Commissioner O'Dell inquired if everyone had a means of securing sensitive material if custodians were working night shift. Mr. Cooper conveyed that he did. Commissioner O'Dell further noted it is not good when you have people hired to perform cleaning services and you have office staff workers taking on that added responsibility and their time to clean. Commissioner O'Dell went on to say that he recognized the difficulty for anyone to clean during business hours and President Blankenship conveyed for everyone to keep in mind, they need to be able to get within each office. Clerk Hendrickson noted that it is a reflection on the elected officials on how this courthouse is maintained. The Commission fully understood the groups concerns and assured everyone that this

MINUTES OF THE NICHOLAS COUNTY COMMISSION - MAY 17, 2006

matter will be addressed. Meanwhile, they will consider hiring a temporary person or contracting a cleaning firm.

On a separate issue, Mr. Cooper asked for the Commission to consider an alternate water source (bottled water) for their office, expressing that the water fountain in the hallway is always dirty. President Blankenship conveyed that he would ask Mr. Myers to look into the situation of possible connecting a line to install a water cooler.

Mr. Hudnall brought up the Court Security Grant in making the McClung Annex secure and for people entering through one door. The county could purchase a metal detector, but as a condition, we would need to provide a uniformed bailiff to screen people entering. He believed this would alleviate people just milling about waiting for other parties who are there on business or court matters. If the Sheriff's Department could see its way clear in providing a bailiff to oversee this, it would definitely make the facility more business like and more secure taking into consideration both family and magistrate courts, his office as well as the 911 Center. The Commission appreciated the information.

At the request of the Commission, E9-1-1 Coordinator Joey DeRito was asked to comment concerning a mapping request from the County Clerk to better help placing registered voters in the correct voting precinct. Sitting in: Clerk Wanda Hendrickson. Mr. DeRito noted he was aware of Mrs. Hendrickson's desire to have this material available, but until such time as Micro Data completes its second phase of work for Nicholas County, he has no means to provide this information. Mr. DeRito conveyed that Micro Data was hired by the State of West Virginia Mapping and Addressing Board to complete the mapping for counties within the state. Mr. DeRito conveyed his office has completed everything they can do and are waiting for Micro Data to come in and review what their office has accomplished in order to receive the software to enter into the next phase. He conveyed it to be his understanding that they were sent to the eastern panhandle to complete those counties first. During the last Mapping and Addressing Board meeting he attended, the State relayed that if Micro Data could not complete what they were hired to do in a timely manner, that they would be fired, and the funds paid into by the counties for this service would be reimbursed back. Commissioner Hinkle asked if it would be helpful if we would draft a letter to the State to see if they cannot expedite this. It was agreed for our office to draft a letter to the State for an update on this situation.

Appearing before the Commission - Roy Collins and Kim Workman

Mr. Collins and Mrs. Workman presented a letter on behalf of the residents of Birch River concerning a Small Cities Block Grant request for the Birch River - Route 82 & Anthony Creek Water Extension Project. The letter noted that the Infrastructure & Job Development Council approved the Birch River Public Service Districts application on April 10, 2006 to extend the water in Birch River. The water would be extended east on Route 82 to the Nicholas/Webster County lines and up Anthony Creek, adjacent to Route 82. With an estimated cost estimate of 1.4 million dollars, this water extension project would provide water to over a hundred residents. President Blankenship informed them that there is a funding cycle for this grant funds in which the county can endorse on behalf of a Public Service District. Currently the Commission has endorsed an application for Gauley River Public Service District for the Rt. 39 water extension for the second time. Public Service Districts wishing to obtain this grant funding must have all its documentation, paper work and other funding sources being considered in order, for them to proceed. It would be up to the Public Service District to approach the County to officially request this consideration. President Blankenship noted that Nettie-Leivasy Public Service District has approached the Commission for Small Cities funding consideration, however, they are not ready to proceed at this point. Commissioner Hinkle noted that the Commission can only do one application at a time. It would be likely that we would stay with this project even if it would be next year. Then if Nettie-Leivasy PSD would be ready to proceed, they would be next in line, and so on. He noted that Summersville is wanting to put water to Phillips Run and they would be eligible to apply for the funding. The Small Cities Block Grant funding takes into consideration projects from all West Virginia Counties, including the municipalities. The competition for these funds is great. Mr. Collins conveyed that they did explore funding from the Abandoned Mines Division. Concerning the Route 82 project, 30% of the project would be eligible for consideration and the Anthony Creek project was 70%. If the projects are combined, it would be less than 50% and no funding would be available under this program. The Commission informed Mr. Collins and Mrs. Workman, that the Birch River PSD, if they want to pursue Small Cities Block

Grant funding for this project, need to make a request to be put on the counties waiting list for sponsorship of Small Cities Block Grant Application process for this specific project. The Commission thanked them for their interest and for coming by.

Appearing before the Commission - Cora McClung and Agnes McClung Sitting in: County Clerk Wanda Hendrickson and Assessor Ernie Dennison

The ladies appeared to discuss the Canvas voting precinct, requesting that the precinct be moved from the Church to the Ruritan Building. It was noted that they do not have access to a telephone and that cell phones do not work well. The ladies noted that the Ruritan facility is ADA accessible. Commissioner O'Dell conveyed he would like to see it moved from the Church and if necessary to have the telephone company to install a line and we could terminate the service after each election. He would also like to see a telephone line installed at Leivasy. Clerk Hendrickson confirmed that every precinct needed a line for communicating. Commissioner Hinkle noted that the ladies visit today would appear in our local paper. He would like for the public to comment about the change being proposed. It was noted that one other time a precinct change was requested, a notice was sent out to the registered voters therein to solicit their comments. The Commission noted they would take another look at this topic on our June 21st meeting at 9:00 a.m. Meanwhile, the Commission will see if we have any feedback to the proposed change.

Appearing before the Commission - Fred Williams

Mr. Williams appeared on behalf of the City of Summersville's Community Forestry Council he serves on. Mr. Williams noted that their Committee obtained a grant for an Inventory Management Plan. The total grant was for \$10,740. The forestry division provided 50% of grant funding - \$5,370 and the City of Summersville committed \$3,056 leaving a balance of \$2,314 of which he hoped to obtain funding from the County. Mr. Williams noted that the Plan has been completed in which it identified 11 properties of which the Courthouse was one. Other properties included the City of Summersville, Board of Education, Nicholas County Memorial Park, Old Main, Summersville Fire Department and the Nicholas County Senior Center to name a few. Mr. Williams noted that these are public owned lands and his committee's primary objective is to look after the trees. A total of 1,064 trees were inventory and in the survey they were estimated at a combined value of \$1,767,000 which gives each tree an average value of \$1,654. He noted that some trees were in excellent or good condition, some are in fair or poor condition, some are in critical condition and others are dead and posing a danger and hazard to the community. Concerning the trees on the courthouse property, he noted that because of the way they were topped, they are dying and will propose a hazard to people. He noted one in particular that had fungus growing on it. When asked what the Commission could do concerning the trees, Mr. Williams noted that we needed to obtain the services of a professional arborist to look at them and take their suggestions if it means removing the trees or the ones that need pruning, noting a right and a wrong way to do this. Mr. Williams conveyed his purpose this morning was to see if the county would contribute the remaining amount of funds to complete the grant funding. His Committee did have a bill from the Data Resource Group which was due by the end of May. The Commission inquired if the Committee has asked the Board of Education for funding assistance. Mr. Williams indicated they had not. Following discussion, the Commission conveyed to Mr. Williams had they have known about the study earlier, it would have been something we could have planned on. However, we would look into our budget to see if we would be able to help in some fashion. Mr. Williams thanked the Commission for its consideration.

Appearing before the Commission - BB&T Vice President Bruce Tallamy and Debbie Masley, AVP - Commercial Card Sales Consultant with BB&T Bankcard and Merchant Services.

Ms. Masley appeared to present an unsolicited proposal for a BB&T Visa Purchasing Card. Sitting in on the meeting - County Clerk Wanda Hendrickson, Sheriff Wetzel Bennett, Chief Tax Deputy Lynda Osborne and Tax Deputy Linda Johnson

Mr. Tallamy noted that Purchasing Card system is becoming widely accepted among businesses and a few of our fellow counties have already adopted the system and Ms. Masley has worked this program into the State of West Virginia where they have purchase cards. Greenbrier County Commission is currently using the card, Kanawha County Commission is still in a pilot stage and has an abbreviated version of the card, the City of St. Albans and the State of West Virginia. Mr. Tallamy turned the presentation over to Ms. Masley. She conveyed how the Purchasing Card could benefit the County. The card can be set up by the department or by cardholder. The Commission could issue the cards to senior members within each department to pay invoices with when they come due. Its much easier to do rather than writing a check and going through that process. Another benefit is a better cash flow opportunity to invest monies. By paying the vendor in a timely manner it would give you the ability to take advantage of any discounts they may have by using the card. Also, there is a window of time which could be up to 55 days, depending upon when you make your

MINUTES OF THE NICHOLAS COUNTY COMMISSION - MAY 17, 2006

payment and it is no less than 25 days. You would have that window of time where that information and those transactions are coming to BB&T and BB&T are actually paying those through the process and the county would have its monies much longer because we would not pay BB&T until the statement comes through. Another advantage to the purchasing card is the statement. The finance person would make one payment instead of multiple payment to vendors. Each card can be customized to the address specific departmental needs. Clerk Hendrickson inquired upon speaking to the State Auditors Office, she was of the impression that the State would be offering the counties a purchasing card system in the near future. Ms. Masley noted she had actually spoke to Auditor Gainer about the opportunity at some point where there office might oversee a purchasing program for all counties and municipalities. She noted that is a great vision, one they are working very diligently with him, but she does believe that to be somewhere down the road, probably not even in the year 2007. It would be a huge undertaking and he is aware of that - one that will require a lot of cooperation and communication.

The following is an overview from a handout which was included in the packet explaining the program.

The BB&T Purchasing Card is a no-fee payment card that maximizes a company's efficiency and minimizes the paperwork associated with processing purchase orders and payments. The card's have built in controls and comprehensive reporting to track spending while streamlining the purchasing, invoice and payment process. **Company Benefits include:** *no annual fee, low annual percentage rates, reduce purchase order costs, variable credit limits; flexible billing and payment options, control spending, eliminate paperwork, 100% fraud protection* **Spending Controls** - *single per transaction dollar limits, daily and monthly spending limits, vendor blocking, cash advances and ATM access can be restricted, control of daily authorizations* **Online Account Management** - *BB&T Credit Card Connection - complete online access to your account information, Visa Information Source - key information at your fingertips, including 1099 and socioeconomic reporting, Procard - desktop software that makes card management easy* **Cardholder Benefits** - *worldwide acceptance at over 30 million locations, simplicity and convenience, dedicated client service center reduces paperwork* **Visa Liability Waiver Insurance** - *automatic enrollment, no deductible, no extra cost, no maximum cap per company, coverage up to \$5,000 per cardholder if you have one to four valid cardholders, coverage up to \$100,000 per cardholder if you have five or more valid cardholders, coverage for cash advances, officers, and ghost accounts, simplified claim procedures* **Travel Benefits** - *emergency cash and care replacement, auto rental insurance covering cardholders against theft or damage, medical and legal referrals and assistance, emergency ticket replacement, lost luggage assistance, emergency message and emergency transition services, pre-trip planning, emergency transportation assistance, \$250,000 travel accident insurance coverage.* Following the presentation, Clerk Hendrickson noted she could see advantages of going with such a system. While it would not cut down on the time to charge the purchases to the proper line item accounts, the amount of checks to write and reconcile would be greatly reduced. President Blankenship conveyed it would be good if the Sheriff and the County Clerk would take it upon themselves to contact Greenbrier County to see how the program is working for them. Ms. Masley conveyed that they do offer a cash back rebate with a threshold of \$500,000. After a twelve month period from the date the card is put into service the account is reviewed and a tier is set. The primary incentives would be vendor discounts, better records accounting and returns on investments. No decision was made at this time by the Commission and BB&T representatives were informed they would take this under consideration. The Commission thanked everyone for their input.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, with motion passing unanimously, the Commission entered into an executive session at 12:18 p.m., pursuant to West Virginia Code 6-9A-1 with Sheriff Bennett and E9-1-1 and OES Director Joey DeRito

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, with motion passing, the Commission entered back into regular session at 12:55 p.m. No action was noted as a result of the executive session.

125 Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, with motion passing unanimously, T. G. Griffith was reappointed to the Birch River Public Service District for a six year term of office expiring on May 24, 2011.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, with motion passing unanimously, Steven Keen was appointed to the Craigsville Public Library Board of Trustees to fill the unexpired term of John Adams. Term will expire June 30, 2007.

126 Upon motion moved by Commissioner O'Dell and seconded by Commissioner Hinkle, with motion passing unanimously, the Commission approved an Agreement with the Division of Culture and

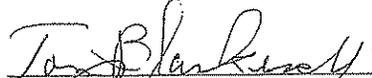
MINUTES OF THE NICHOLAS COUNTY COMMISSION - MAY 17, 2006

History for and on behalf of the Archives and History, for and on behalf of Records Management and Preservation Board in support of a records project grant for the Nicholas County Clerk in the amount of \$8,120 to support the microfilm, repair and encapsulation of the proposed lot of 100 maps and the purchase of map cabinets.

Documents attached:

- Order appointing T. G. Griffith to the Birch River Public Service District
- Agreement with the Division of Culture and History
- Lease with the West Virginia Department of Transportation, Division of Highways, concerning use of the former DOH garage.

Being no further business to come before the Commission, the Commission adjourned until June 17, 2006.


Tom Blankenship, President

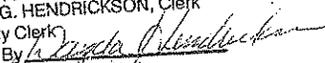

Earl O'Dell, Commissioner


Spurgeon Hinkle, Commissioner

BOOK 427C 125

I, WANDA G. HENDRICKSON, do hereby certify that this is a true copy from the records.

Teste: WANDA G. HENDRICKSON, Clerk
Nicholas County Clerk

Date 5/16/07 By  Clerk

By  Deputy

MINUTES OF THE NICHOLAS COUNTY COMMISSION - OCTOBER 6, 2004

The Nicholas County Commission met in a regular session at the Nicholas County Courthouse Wednesday, October 6, 2004. Present were: President Tom Blankenship, Commissioner Birl O'Dell and Commissioner Mert Myers. Also present: Clerk John Greer

Representing the media - Ray Corbin

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, exonerations as presented by the Nicholas County Assessor were reviewed and approved.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, invoices were reviewed and approved for payment.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, estate and fiduciary matters were approved as presented by the Nicholas County Clerk.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, minutes from commission meeting September 15, 2004 were reviewed and approved as presented.

Appearing before the Commission - Eldon Collins

Mr. Collins appeared to follow up on an inquiry he had made approximately one year ago concerning water expansion in Birch River from the grade school up to the Webster County line. He conveyed both he and his daughter has attended the meetings of the Birch River Public Service District (PSD) and no progress has been made. He stated that the PSD's engineer had received a grant to perform an engineering study for this area, but no results have been made. Mr. Collins conveyed, he is trying to work with the PSD and called the Department of Abandoned Mines for an application which he turned over to the district. Mr. Collins conveyed a gentleman he had been corresponding within this department stated they never received the application. President Blankenship conveyed he spoke with board member T. G. Griffith and was told the application was submitted but was turned down for the funding cycle and will be considered again at a future date. In Mr. Collins presence, the Commission placed a telephone call to T. G. Griffith. Mr. Griffith conveyed he had been on the phone last week with the Department of Abandoned Mines and was told when the PSD submitted its application, the Department of Abandoned Mines was in a transition of moving its office from St. Albans to Kanawha City. During this time, the main secretary took a medical leave and the department hired a substitute who then took a medical leave. It was conveyed to him that when the Department of Abandoned Mines contacted the main secretary who is still on leave, she remembered the application, so now they are trying to track this down. In regard to the grant for the engineering study, Mr. Griffith conveyed he was unaware of where that stood without first checking with the engineer. Mr. Griffith conveyed he would pursue this. The Commission conveyed they would let Mr. Collins know of their findings.

Appearing before the Commission - Marla Short, Director of Nicholas County Starting Points and Board Member Mary Ann Dean

Ms. Short recognized the Commission's support of the Starting Points Program for the family and children of Nicholas County. She conveyed they were very blessed to receive funding from the Legislative Digest Funds and hope they will continue to receive this funding source in the future. The grant enabled the Center to put a satellite facility within the Craigsville community and reported the site was doing extremely well. To say thank you, Ms. Short presented plaques to the Commissioners that some of the children had worked on (hand prints). The Commission conveyed they were happy to lend their support and thanked both ladies.

Appearing before the Commission - Juanita Frame and Sherry Ward representing Craigsville Elementary and Darrell Johnson

Ms. Frame explained that the Board of Education put in a double wide for preschool which took up

MINUTES OF THE NICHOLAS COUNTY COMMISSION - OCTOBER 6, 2004

part of the basketball court. They had put in a request to the Board of Education to replace the basketball court and put in a four square, but stated that Mr. Penix did not recall receiving the letter. Mr. Johnson was contacted to prepare an estimate for the materials and he conveyed was prepared to do the dozer work and grading at no cost. Mr. Ray Sparks who does paving work will be in the area within soon and if they could secure the funding he would do the work and would not charge a set up fee. President Blankenship conveyed he would like to see the Board of Education participate in this venture and would contact Mr. Penix for their position on this project. They would likewise search the county's budget to see what we may be able to come up with. The Commission thanked the group for coming by and for being involved in their community.

Appearing before the Commission - County Clerk John Greer and Wanda Hendrickson
Mr. Greer and Mrs. Hendrickson presented to the Commission Nicholas County's Financial Statement for Fiscal Year ending June 30, 2004. Mr. Greer conveyed that the Auditor was down to assist their office with this. Mrs. Hendrickson informed the Commission that Software Systems was working on the fixed assets program and that the Auditor picked up the Courthouse, McClung Annex and Johnson Building which is now included. In this process Wanda conveyed they found the cost to construct the courthouse which was noteworthy - \$21,978. The following was suggested by the auditor - Originally the Commission had set \$25,000 as a minimum for all buildings, and now we need to lower that to \$20,000 in order to pick up the Courthouse. Also, we need to change the life of the courthouse and annexes from forty years to one hundred fifty years since the courthouse is already more than one hundred year's old. Other structures should be up to fifty years. In addition, it was recommended for a salvage value of ten percent should be placed upon the buildings after they depreciate and vehicles at \$1,000. Upon motion moved by Commissioner Myers and seconded by Commissioner O'Dell, with motion passing unanimously, the Commission agreed to incorporate the recommendations of the auditor into our policy and procedures. Mrs. Hendrickson conveyed the Auditor also recommended that the original construction value should be placed upon all structures up at the park.

Appearing before the Commission - Marcia Brown representing H.O.P.E.
Upon motion moved by Commissioner Myers and seconded by Commissioner O'Dell, with motion passing unanimously, the Commission entered a Proclamation designating the month of October as Domestic Violence Awareness Month. Mrs. Brown conveyed with the Commission's approval they would like to do the clothesline project on the courthouse lawn again this year and also would like to hang a wreath opposite of the Cancer Society's wreath. The Commission conveyed that would be fine.

Appearing before the Commission - Alice King representing Region 4 Planning and Development Council.

Mrs. King conveyed that the City of Summersville is considering a Preliminary Engineering Report to provide sewer service to the Glade Creek Area. The preliminary engineering study will cost \$12,000 of which the City agreed to pay \$4,000 contingent upon the Commission paying \$4,000 with the remainder to be paid by a private developer.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, the Commission agreed to contribute \$4,000.00 toward a Preliminary Engineering Report with the City of Summersville and a private developer each contributing \$4,000 for a total of \$12,000 for the study.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, the Commission entered into an executive session at 10:17 a.m., with Sheriff Meadows to discuss a personnel matter pursuant to West Virginia Code 6-9A-4.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, the Commission entered into regular session at 10:40 a.m.
For the record it was noted that no decision was made while in executive session.

Appearing before the Commission - Richwood Chief of Police K. T. Delk and Mayor Bob Henry Baber Sitting in: Sheriff David Meadows.
Chief Delk requested funding consideration from the Commission to obtain two state surplus

MINUTES OF THE NICHOLAS COUNTY COMMISSION - OCTOBER 6, 2004

vehicles at a cost of \$12,000. He believed he could purchase said vehicles at a cost between \$6,000 to \$7,000 each. He conveyed a citizen of Richwood donated to his department \$2,000 which he could use as a match if necessary. Upon checking with the Surplus office they had several vehicles from which to choose. He also checked with Chief Deputy Wayne Plummer in regard to a surplus vehicle within the county's fleet. Chief Delk explained that winter is fast approaching and his department could use the county's assistance in this regard. President Blankenship asked if the City was contributing any funds and the Mayor explained that the City's monies were relatively low, but planned to put some monies toward the purchase. He conveyed that spending over the next six to eight weeks would put financial constraints on the City and he did not want to jeopardize meeting payroll. The Mayor stated that while he appreciated the recent contribution of the Commission to retain their sidewalk grant, they are trying to give back to the communities. They recently came into some furniture of which some went to the county's Office of Emergency Services. Following discussion, the Commission, upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, the Commission moved to contribute \$6,000 to the City of Richwood toward for the acquisition of a state surplus vehicle and also donate off the county's fleet a 1991 Jeep.

Upon motion moved by Commissioner O'Dell and seconded by President Blankenship, with motion passing unanimously, Robert Wharton was reappointed to the Nicholas County Building Commission for a five-year term of office ending October 17, 2009.

Upon motion moved by Commissioner Myers and seconded by President Blankenship, with motion passing unanimously, Libby Coffman was reappointed to the Birch River Public Service District for a six-year term of office ending May 24, 2010.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, Robert Meadows was appointed to the Nettie-Leivasy Public Service District to fill the unexpired term of Paul Don Ritchea who has since resigned. Mr. Meadows' appointment will expire October 10, 2009.

Upon motion moved by President Blankenship and seconded by Commissioner Myers, with motion passing unanimously, Terry Echols and Patricia Baker was reappointed to the Nicholas County Parks and Recreation Commission for a three year term of office expiring October 30, 2007. In addition to the motion a letter was received from the Parks and Recreation Commission that Darrell White, whose term was up as well, no longer wished to serve and submitted recommendations for the position. The Commission appointed Gene Underwood to fill the expired term of Darrell White. Mr. Underwood's term of office will expire October 30, 2007.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, the Commission approved an Amendment of Solicitation/ Modification of Contract from the Huntington District Corps of Engineers for law enforcement service at Summersville Lake to remove unused service during FY 2004.

Upon motion moved by Commissioner Myers and seconded by Commissioner O'Dell, with motion passing unanimously, the Commission entered a Resolution authorizing Nicholas County OES Director Joey DeRito to enter into agreements with the West Virginia Office of Emergency Services for the Emergency Management Performance Grant.

Upon motion moved by Commissioner O'Dell and seconded by Commissioner Myers, with motion passing unanimously, the Commission approved an estimate from Paul Bostic for the installation of lights in the attics of the courthouse and McClung Annex in the amount of \$9,120.72.

Upon motion moved by Commissioner Myers and seconded by Commissioner O'Dell, with motion passing unanimously, the Commission, for safety purposes, approved an estimate from Morris Tree Service to remove dead wood, rounded over (topped) and cleanup of six maples on the courthouse lawn in the amount of \$4,100.00.

Commissioner O'Dell moved to give a forgivable loan in the amount of \$50,000.00 to West Virginia Metal Wholesales, Inc. Commissioner Myers seconded the motion and motion passed. President Blankenship voted nay.

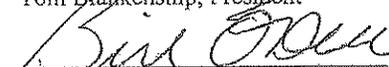
MINUTES OF THE NICHOLAS COUNTY COMMISSION - OCTOBER 6, 2004

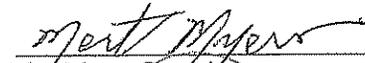
Documents attached:

- Order appointing Robert Meadows to the Nettie-Leivasy PSD
- Oath of Office for Robert Meadows
- Order appointing Libby Coffman to the Birch River PSD
- Amendment of Solicitation/Modification of Contract
- Proclamation for Domestic Violence Awareness Month
- Resolution for Emergency Management Performance Grant

Being no further business to come before the Commission, the Commission hereby adjourned until October 20, 2004.


Tom Blankenship, President


Bill O'Dell, Commissioner

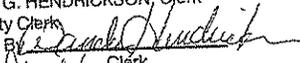

Mert Myers, Commissioner

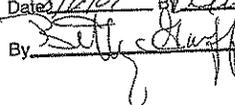
BOOK 41PC 277

I, WANDA G. HENDRICKSON, do hereby certify
that this is a true copy from the records.

Teste: WANDA G. HENDRICKSON, Clerk

Nicholas County Clerk

Date: 10/6/04 By:  Clerk

By:  Deputy

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MINUTES OF THE NICHOLAS COUNTY COMMISSION - JUNE 04, 2008

The Nicholas County Commission met in regular session at the Nicholas County Courthouse on Wednesday, June 04, 2008. Present were: President Tom Blankenship, Commissioner Birl O'Dell and Commissioner Spurgeon Hinkle. Sitting in: County Clerk Wanda Hendrickson

Representing the media - Ray Corbin

Commissioner Hinkle moved to approved the Minutes of the Nicholas County Commission of May 7, 2008 and May 21, 2008. Discussion - none

Commissioner Hinkle moved to approve all exonerations as presented by the Nicholas County Assessor's Office and any budget revisions that may arise at the request of elected officials. Discussion - none.

Commissioner O'Dell moved to approve invoices for payment. Discussion - none.

Commissioner O'Dell moved to approve estate and fiduciary matters as presented by the Nicholas County Clerk. Discussion - none.

Appearing before the Commission - County Clerk Wanda Hendrickson and Prosecuting Attorney Mark Hudnall regarding the review of Wills submitted for probate.

In regard to a Will presented for probate for Phillip D. Kesler, Sr., appearing before the Commission was Patty Griffin and Donna Taylor it was noted the Will was witnessed and notarized, however it was noted that Notary Carol Rogers was witnessing the signature of Phillip Kesler signature and that of Rebecca Hamilton's signature, but not that of the other witness, Donna Taylor. It was the recommendation of Prosecutor Hudnall for the Clerk's office to give proper notice to all the heirs and set this matter for hearing. Following a brief discussion, it was the decision of the commission for this matter to be set for hearing. Mrs. Griffin was asked to present to the County Clerk the last known addresses of all heirs. The hearing was scheduled for June 18 at 9:00 a.m. Commissioner Hinkle moved on the Estate of Phillip Kesler, Sr., that we notify the heirs pursuant to discussion today and the hearing will be held on the 18 day of June at 9:00 a.m. Discussion - none

In regard to a Will presented for probate for Jean Dancy it was noted by the Clerk that she passed away over the weekend and her son brought in the Will that was dated in 2004 which was signed and witnessed. Then a second Will was brought in by her granddaughter that was dated and signed prior to the one her son had brought in. Donna wanted to make the court aware that at the time the Sheriff was appointed conservator for Jean Dancy, she was appointed guardian over her. And she also conveyed that Mrs. Dancy was not capable of making the Will that her son submitted for Probate. She further had a statement from her doctor to back up her statement. Prosecutor Hudnall conveyed that the statutory procedure to contest a Will under those circumstances on the incapacity to make the newest Will as set out in the Code, the Commission could hear the matter or have it referred to a Fiduciary Commissioner for hearing. Commissioner O'Dell moved to assign this estate matter to the Fiduciary Commissioner to handle. Discussion - none.

In regard to a Will brought in concerning the Estate of Mary Amick, it was signed, witnessed and notarized, however the word Draft was written on the document. Prosecutor Hudnall conveyed there is a reason law firms do that so that corrections can be made. It is not intended to be an original. It raises a question if that was the testators intent, whether it was their final intent and whether an original was later prepared. It was the recommendation of the Prosecutor for the matter to be set for hearing or referred to the Fiduciary Commissioner. Commissioner Hinkle moved for the Estate of Mary D. Amick be set for hearing before the Commission on June 18 at 10:00 a.m., and all heirs notified by the County Clerk. Discussion - none

In regard to the Wills of Augustus Wells, Charles Cunningham, William Acord, Dana O'Dell and Willard Estep, all of which were in proper form with two witnesses and notarized. Commissioner O'Dell moved to accept Wills as presented. Discussion - none

MINUTES OF THE NICHOLAS COUNTY COMMISSION - JUNE 04, 2008

Appearing before the Commission - Sara Cranston representing Summersville Public Library, Robin Bartlett representing Richwood Public Library and JoAnn Flynn representing Craigsville Public Library. Sitting in: Nicholas County Board of Education member Jim Fitzwater, Dr. Yancy Short

Mrs. Cranston conveyed to the Commission that they libraries did take the Commission's advise during its last visit with the Commission and went to the Board of Education. As a result, the Board of Education did come up with an additional \$5,000 for the libraries for a one time contribution for the upcoming fiscal year. Also, following years of going to the legislature for grants and aids, they did receive assistance, however it does require a match. The aid went from \$4.06 to \$4.61 per capita which gives them about another \$5,000 income. The libraries match now goes to \$40,860. Mrs. Cranston conveyed that the City of Summersville has been able to come up with the additional match for its library. Mrs. Bartlett stated that the Richwood Library was short \$7,000 and Craigsville is short \$15,000 for 08/09. After Craigsville receives its additional projected funds they will be short \$20,000. Commissioner Hinkle asked if those were the projections for 08/09 of which the ladies confirmed. Mrs. Cranston noted that both Richwood and Craigsville was fell short of the current year which goes into the three year average match. She noted that in 09/10 is when the libraries will feel the consequences of the new bill, however the Senate Bill is already into effect. Mrs. Cranston conveyed that they can make a case before the Library Commission if they can show that they have been working with their local government agencies and Board of Education and show an increase there would be room for negotiation. The State does not want to take away their money anymore than the libraries want to lose it. So as long as they can show an active working relationship between local funding agencies they to stand a chance in keeping their funding. President Blankenship conveyed there is nobody here that does not want to work with the libraries, however, there is a concern and some questions and offered the following statement. Without being disrespectful to anyone, the levy that the Board of Education has in place for the libraries, other than that, the Board of Education has offered the libraries zero dollars. The Commission has over the past seven to eight years given \$10,000 with the exception of a couple of years which said amount was reduced, to each of the three libraries. President Blankenship noted he did not believe that was what the group was indicating, however, wanted the public to know that we have participated allocated funding toward its libraries over past years. While the State is providing this added funding, in turn they are creating obstacles for the libraries to obtain said funding and are creating a problem for the county, cities and board of educations. He conveyed that the legislature needs to step up to the plate. President Blankenship conveyed that the Sheriff was coming in later requesting additional money for gasoline to run his vehicles and noted a court case already on the books that it was the constitutional duty of commission to fund county offices first. Following discussion, It was suggested for the Commission, Board of Education and Libraries need to get together and brainstorm on how we can arrive at some in-kind match of which would be helpful. Commissioner Hinkle noted that perhaps the Commission would be better prepared to make a decision in August after we receive a handle on the county's carryover. The Commission thanked everyone for coming in.

Commissioner O'Dell moved to enter into an executive session at 10:05 a.m. pursuant to West Virginia Code §6-9a-4 for a personnel matter. Discussion - none

Commissioner O'Dell moved to enter back into regular session at 10:40 a.m. Discussion - none. President Blankenship noted that no decisions were made while in executive session.

Appearing before the Commission - J. D. Fagan and Sonny McClung representing the Nicholas County Volunteer Rescue Team.

Mr. McClung conveyed to the Commission that much of the Rescue Teams equipment was failing and requested the Commissions consideration for a monetary contribution of \$9,000. Following a brief discussion, the Commission informed the gentlemen they would gentlemen's request into consideration for some funding assistance. The amount remained undetermined.

MINUTES OF THE NICHOLAS COUNTY COMMISSION - JUNE 04, 2008

Appearing before the Commission - Mark Lively and Ellen Hartsog representing Alpha Records Management.

Mr. Lively and Mrs. Hartsog appeared to introduce their company which is a records storage facility located in Beckley. They maintain a warehouse and all records are placed on shelves, bar coded for easy access and the offices determine who has access to the files. The facility is climate controlled and they do maintain a vault for computer backups. Their service is mainly for older records that are needed to be maintained but not viewed on a regular basis. The facility is monitored 24/7 and tied into the Raleigh County EOC and camera monitored. They did give Raleigh County Circuit Court has a reference and could provide. They also offer the task of shredding old files as well. They extended an invitation to the Commission to tour their facility and general information and pricing documentation for the Commission to review. The Commission thanked Mr. Lively and Ellen Hartsog for coming by.

62 Commissioner O'Dell moved to approve the Resolution authorizing a submission of an Application for Fiscal Year 2008 Community Participation Program on behalf of the Leivasy Peoples Place Community Building for improvements in the amount of \$3,000. Discussion - none

61 Commissioner Hinkle moved to approve the Resolution authorizing a submission of an Application for Fiscal Year 2008 Community Participation Program on behalf of the Nicholas County Starting Points for maintenance and repair of building and grounds and supplies in the amount of \$5,000. Discussion - none

60 Commissioner O'Dell moved to approve the Resolution authorizing a submission of an Application for Fiscal Year 2008 Community Participation Program on behalf of the Canvas Ruritan Club for facility improvements in the amount of \$5,000. Discussion - none

59 Commissioner Hinkle moved to approve the Resolution authorizing a submission of an Application for Fiscal Year 2008 Community Participation Program on behalf of the Muddiety VFD for rescue equipment in the amount of \$1,100. Discussion - none

58 Commissioner O'Dell moved to approve the Resolution authorizing a submission of an Application for Fiscal Year 2008 Community Participation Program on behalf of the Brian Sparks - Agriculture Building in the amount of \$15,000. Discussion - none

Commissioner O'Dell moved to reappoint Dona Bayless to the Craigsville Public Library for a five year term of office ending June 30, 2013. Discussion - none

Commissioner O'Dell moved to reappoint to the Nicholas County Enhanced Emergency Telephone System Advisory Board for a three year term of office ending June 30, 2011 the following individuals - Commissioner Spurgeon Hinkle, Nicholas County Commission agency representative J. W. Hughes, Richwood Police Chief, Sheriff Wetzel Bennett, Redi-Care Ambulance David Cox, and Gauley District Private Sector Member Nelson Deitz. Discussion - none

Commissioner Hinkle moved to reappoint Arden Bayless to the 4-C Economic Development Authority Board for a three year term of office ending June 30, 2011. Discussion - none

Commissioner Hinkle moved to reappoint Steve Antoline to the Nicholas County Airport Authority for a five year term of office ending July 1, 2013. Discussion - none

Appearing before the Commission - Sheriff Wetzel Bennett and Chief Deputy Wayne Plummer

Sheriff Bennett informed the Commission that while he could offset his gas line item through his vehicle maintenance, it would not be enough to carry them through to June 30. Commissioner O'Dell conveyed the Commission would look to see where we could come

MINUTES OF THE NICHOLAS COUNTY COMMISSION - JUNE 04, 2008

up with additional funding to place in his departments gas account.
 On another matter the Sheriff mentioned that some of the officers have quit within his department only to come back and noted that some of the officers had received credit on the pay scale. The Sheriff mentioned he would like to see them reinstated on the pay scale as an incentive to keep them here. Sheriff Bennett conveyed he would have enough money within his budget to take care of it. President Blankenship inquired if the Civil Service Board would have anything to do with this pay scale matter and the Sheriff responded the Commission needed to make a ruling in order for them to proceed. Concerning the Civil Service - they would make the determination if they return with their seniority (in rank). President Blankenship conveyed to the Sheriff that while he was not saying he was against his request, in the past anything that we have changed when it came to wages or come to time the county commission has taken the position that it would go to the Nicholas County Wage and Benefit Board first for its recommendation. Commissioner O'Dell noted it would be good if the Civil Service Board would give their blessing as well. President Blankenship noted the Commission needed to take this matter under advisement and perhaps a decision will be give to the Sheriff at our next meeting.
 On another matter the Sheriff conveyed he needed the air conditioning units addressed within his private office and that of the tax office. The Commission advised they would inform the maintenance supervisor to address this matter.

Appearing before the Commission - Tammy Barr representing the Retired Senior Volunteer Program

Mrs. Barr stopped by the office to view the outside lawn with the commission for a place on the lawn to erect a Blue Star Memorial that recognized men and women of the United States Armed Services. They were looking at the Freedom Rally in August for the Governor to come down to reveal it and take the event back for what it was originally intended for - to recognize veterans. Mrs. Barr conveyed they do have the money to purchase the marker and it would be for Nicholas County. The Commission took time to step outside to make a site selection.

Commissioner O'Dell moved to reappoint Mike Davis to the Birch River Public Service District for a six year term of office ending May 24, 2014. Discussion - none

Commissioner O'Dell in view of the Sheriff bringing to the attention of the Commission placing those deputies who have left county employment and returned back to their original status on the county's longevity pay scale, he would recommend and so move that it be brought before the Nicholas County Wage and Benefit Review Board for their recommendation back to the commission. Discussion - none

Commissioner Hinkle noted that Commissioner O'Dell had to leave prior to adjournment, and if they could get in touch with him to return, he would prefer to meet with Prosecutor Mark Hudnall concerning a personnel matter. The Commission was able to reach Commissioner O'Dell and upon his return Prosecutor Hudnall appeared before the Commission to discuss a personnel matter. Commissioner O'Dell moved to enter into an executive session pursuant to West Virginia Code §6-91-4 at 4:45 p.m. Discussion - none
 Commissioner O'Dell moved to enter back into regular session at 5:50 p.m. Discussion - President Blankenship noted that no decision was made while in executive session.

Documents attached:

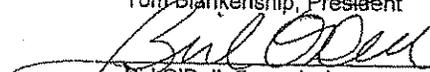
- Resolution authorizing submission of an Application with the WV Development Office on behalf of the Leivasy's Peoples Place
- Resolution authorizing submission of an Application with the WV Development Office on behalf of the Nicholas County Starting Points
- Resolution authorizing submission of an Application with the WV Development Office on behalf of the Canvas Ruritan Club
- Resolution authorizing submission of an Application with the WV Development Office on behalf of the Muddiefy VFD

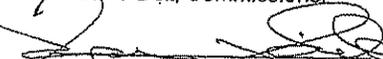
MINUTES OF THE NICHOLAS COUNTY COMMISSION - JUNE 04, 2008

Resolution authorizing submission of an Application with the WV Development Office on behalf of the Brian Sparks - Agriculture Building

Being no further business to come before the Commission, the Commission adjourned until June 18, 2008.


Tom Blankenship, President


Bill O'Dell, Commissioner


Spurgeon Hinkle, Commissioner

6007 4376 085

STATE OF WEST VIRGINIA

COUNTY OF NICHOLAS, ss:

IN THE COUNTY COMMISSION THEREOF

ORDER

WHEREAS, the County Commission of Nicholas County, West Virginia, did heretofore, by an Order entered and adopted, create the Birch River Public Service District; and,

WHEREAS, under the provisions of Article 13A of Chapter 16 of the Code of West Virginia, the powers of said public service district shall be vested in and exercised by a public service board; and,

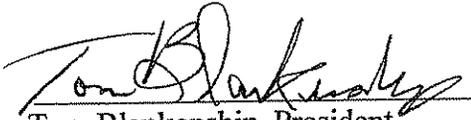
WHEREAS, since there are no city, incorporated town or other municipal corporation included within said district, it is provided by said Article 13A of Chapter 16 of the Code of West Virginia that this County Commission shall appoint members of said board who shall be persons residing within the district; and,

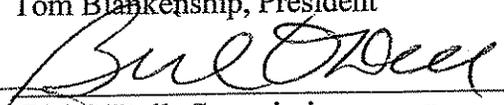
WHEREAS, the said County Commission finds that it is proper and desirable to reappoint T. G. Griffith to the Birch River Public Service District with term of office ending May 24, 2012.

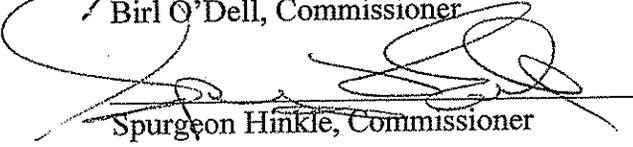
NOW, THEREFORE, IT IS HEREBY ORDERED by the County Commission of Nicholas County, West Virginia that T. G. Griffith is a person residing within the boundaries of Birch River Public Service District and he is hereby appointed as a member of the Birch River Public Service District with term of office expiring May 24, 2012..

Entered this 17 day of May, 2006.

BOOK 42PG 129


Tom Blankenship, President


Burl O'Dell, Commissioner


Spurgeon Hinkle, Commissioner

STATE OF WEST VIRGINIA

COUNTY OF NICHOLAS, ss:

IN THE COUNTY COMMISSION THEREOF

ORDER

WHEREAS, the County Commission of Nicholas County, West Virginia, did heretofore, by an Order entered and adopted, create the Birch River Public Service District; and,

WHEREAS, under the provisions of Article 13A of Chapter 16 of the Code of West Virginia, the powers of said public service district shall be vested in and exercised by a public service board; and,

WHEREAS, since there are no city, incorporated town or other municipal corporation included within said district, it is provided by said Article 13A of Chapter 16 of the Code of West Virginia that this County Commission shall appoint members of said board who shall be persons residing within the district; and,

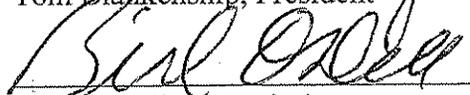
WHEREAS, the said County Commission finds that it is proper and desirable to reappoint Libby Coffman to the Birch River Public Service District with term of office ending May 24, 2010.

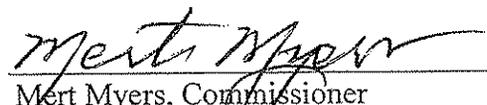
NOW, THEREFORE, IT IS HEREBY ORDERED by the County Commission of Nicholas County, West Virginia that Libby Coffman is a person residing within the boundaries of Birch River Public Service District and she is hereby appointed as a member of the Birch River Public Service District with term of office expiring May 24, 2010.

Entered this 6 day of October, 2004.

BOOK 41PC 283


Tom Blankenship, President


Birl O'Dell, Commissioner


Mert Myers, Commissioner

COUNTY OF NICHOLAS, ss:

IN THE COUNTY COMMISSION THEREOF

ORDER

WHEREAS, the County Commission of Nicholas County, West Virginia, did heretofore, by an Order entered and adopted, create the Birch River Public Service District; and,

WHEREAS, under the provisions of Article 13A of Chapter 16 of the Code of West Virginia, the powers of said public service district shall be vested in and exercised by a public service board; and,

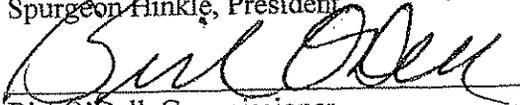
WHEREAS, since there are no city, incorporated town or other municipal corporation included within said district, it is provided by said Article 13A of Chapter 16 of the Code of West Virginia that this County Commission shall appoint members of said board who shall be persons residing within the district; and,

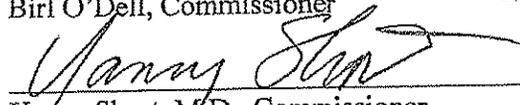
WHEREAS, the said County Commission found that it was proper and desirable to reappoint Mike Davis to the Birch River Public Service District with term of office ending May 24, 2014 as conveyed in the Minutes of the Nicholas County Commission dated June 04, 2008.

NOW, THEREFORE, IT IS HEREBY ORDERED by the County Commission of Nicholas County, West Virginia that Mike Davis is a person residing within the boundaries of Birch River Public Service District and he is hereby appointed as a member of the Birch River Public Service District with term of office expiring May 24, 2014.

Entered this 7 day of January, 2009.


Spurgeon Hinkle, President


Earl O'Dell, Commissioner

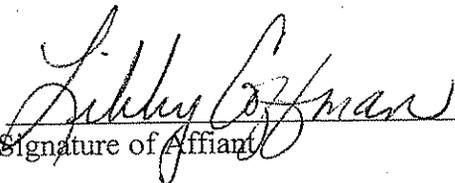

Yancy Short, M.D., Commissioner

OATH OF OFFICE AND CERTIFICATE

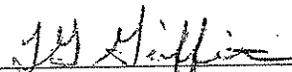
STATE OF WEST VIRGINIA

COUNTY OF NICHOLAS TO-WIT:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office as a board member of the *Birch River Public Service District* to the best of my skill and judgment SO HELP ME GOD.

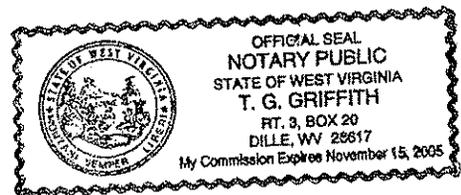

Signature of Affiant

Subscribed and sworn to before me in said County and State this 26th day of October, 2004.


Notary Public

My Commission Expires: Nov. 15, 2005

BOOK 41PC 301



I, WANDA G. HENDRICKSON, do hereby certify that this is a true copy from the records.

Teste: WANDA G. HENDRICKSON, Clerk
Nicholas County Clerk
Date 11/15/04 By Wanda Hendrickson
By Libby Coffman Clerk Deputy

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF NICHOLAS TO-WIT:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office as a board member of the Birch River Public Service District to the best of my skill and judgment SO HELP ME GOD.

[Handwritten Signature]
Signature of Affiant

Subscribed and sworn to before me in said County and State this 15 day of June 2006.

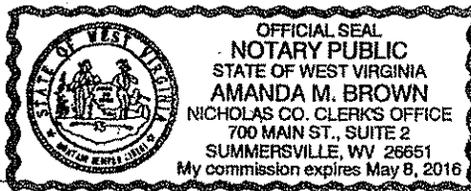
[Handwritten Signature: Amanda M Brown]
Notary Public

My Commission Expires: May 8, 2016

I, WANDA G. HENDRICKSON, do hereby certify that this is a true copy from the records.

Teste: WANDA G. HENDRICKSON, Clerk
Nicholas County Clerk

Date 8/10/07 By [Handwritten Signature] Clerk
[Handwritten Signature] Deputy

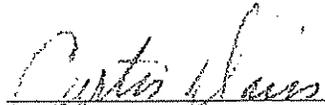


OATH OF OFFICE AND CERTIFICATE

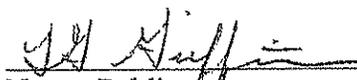
STATE OF WEST VIRGINIA

COUNTY OF NICHOLAS TO-WIT:

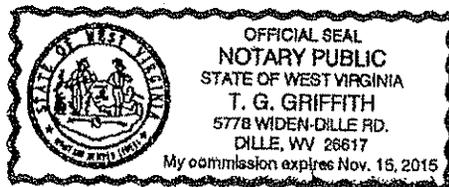
I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office as a board member of the *Birch River Public Service District* to the best of my skill and judgment SO HELP ME GOD.


Signature of Affiant

Subscribed and sworn to before me in said County and State this 16th day of January, 2009.


Notary Public

My Commission Expires: Nov. 15, 2015



RULES OF PROCEDURE

BIRCH RIVER PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: BIRCH RIVER PUBLIC SERVICE DISTRICT.

Section 2. The principal office of Birch River Public Service District (the "District") will be located at 158 Powell's Creek Road, Birch River, Nicholas County, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Birch River Public Service District, and in the center shall be inscribed the corporate seal.

Section 4: The fiscal year of the District shall begin on July 1 of each year and shall end on the following June 30.

ARTICLE II

PURPOSE

This District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act").

ARTICLE III

MEMBERSHIP

Section 1. The members of the Board of the District (the "Board") shall be those persons appointed by The County Commission of Nicholas County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and

request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

ARTICLE IV

MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Board shall hold regular monthly meetings on the 2nd Thursday of each month, at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Board, two (2) members shall constitute a quorum. Each member of the Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise agreed, notice to members of regular meetings shall not be required. Unless otherwise waived, notice of each special meeting of the membership shall be given to all members by the Secretary by fax, telephone, mail or other satisfactory means at least two (2) days before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted. No business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), notice of the date, time, place and agenda of all regularly scheduled meetings of the Board, and the date, time, place and purpose of all special meetings of the Board, shall be made available, in advance, to the public and news media (except in the event of an emergency requiring immediate action) as follows:

A. Regular Meetings. A notice shall be posted and maintained by the Secretary of the Board at the front door or bulletin board of the office of the District and, if different from the office, at the front door or bulletin board of the Nicholas County Courthouse and the front door or bulletin board of the place fixed for regular meetings of the Board not less than three (3) business days before a regularly scheduled meeting is to be held, stating the date, time and place fixed and entered of record by the Board for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same locations by the Secretary of the Board not less than three (3)

business days before such regular meeting is to be held. The agenda listing the matters requiring official action that may be addressed at the meeting may be amended up to two (2) business days prior to the meeting. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the same locations as soon as feasible after such cancellation or postponement has been determined.

B. Special Meetings. A notice shall be posted by the Secretary of the Board at the front door or bulletin board of the Nicholas County Courthouse and at the front door or bulletin board of the office of the District and at the front door or bulletin board of the place fixed for the regular meetings of the Board not less than two (2) business days before a special meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. In addition, a copy of the agenda listing the matters requiring official action that may be addressed at the meeting for each special meeting shall be posted at the same locations by the Secretary of the Board not less than two (2) business days before such special meeting is to be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the same locations as soon as feasible after such cancellation has been determined.

For the purposes of calculating the number of days in any notice period based upon business days, Saturdays, Sundays, legal holidays and the day of the meeting are not counted.

ARTICLE V

OFFICERS

Section 1. The officers of the Public Service Board shall be a Chairman, a Secretary and a Treasurer. The Chairman shall be elected from the members of the Public Service Board. The Secretary and Treasurer need not be members of the Public Service Board, and may be the same person.

Section 2. The officers of the Public Service Board shall be elected each year by the members at the first meeting held in such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected hereinabove provided.

ARTICLE VI

DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Public Service Board. The Chairman shall, together with the Secretary, sign the minutes of all meetings at which he or she shall preside. The Chairman shall attend generally to the executive business of the Board and exercise such powers as may be conferred by the Board, by these Rules of Procedure, or as prescribed by law. The Chairman shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. The Secretary shall, together with the Chairman, sign the minutes of the meetings at which he or she is present. The Secretary shall have charge of the minute book, be the custodian of the Common Seal of the District and all deeds and other writings and papers of the Board. The Secretary shall also perform such other duties as he or she may have under law by virtue of the office or as may be conferred from time to time by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 3. The Treasurer shall be the lawful custodian of all funds of the District and shall disburse funds of the District on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 4. If the Chairman, Secretary or Treasurer is absent from any meeting, the remaining members of the Board shall select a temporary chairman, secretary or treasurer, as necessary, who shall have all of the powers of the absent officer during such period of absence.

ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended, repealed or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present vote for the amendment; but no such change, alteration, amendment, repeal or addition shall

be made at any special meeting unless notice of the intention to propose such change, alteration, amendment, repeal or addition and a clear statement of the substance thereof be included in the written notice calling such meeting.

These Rules of Procedure shall replace any and all previous rules of procedure, bylaws or similar rules heretofore adopted by the District.

Adopted this 21st day of July, 2007.

Curtis Davis
Chairman

W. H. Griffin
Secretary

073720.00001

RULES OF PROCEDURE
BIRCH RIVER PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: BIRCH RIVER PUBLIC SERVICE DISTRICT

Section 2. The principal office of this Public Service District will be located at the Birch River Volunteer Fire Department, Birch River, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed "Birch River Public Service District," and in the center "seal" as follows:

Section 4: The fiscal year of the District shall begin the 1st day of July in each year and shall end on the following June 30.

ARTICLE II

PURPOSE

This District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act").

ARTICLE III

MEMBERSHIP

Section 1. The members of the Public Service Board of this District shall be those persons appointed by The County Commission of Nicholas County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Public Service Board resign or otherwise become legally disqualified to serve as a member of the Public Service Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Public Service Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Public Service Board.

ARTICLE IV

MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Public Service Board of this District shall hold regular monthly meetings on the second Thursday of each month at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Public Service Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Public Service Board of the District, 2 members shall constitute a quorum. Each member of the Public Service Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members by letter or telephone shall be required for regular meetings. Unless otherwise waived, notice in writing of each special meeting of the membership shall be given to all members by the Secretary by mailing the same to the last known post office addresses of the members at least 3 days before the date fixed for such meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended, notice of the time and place of all regularly scheduled sessions of such Public Service Board, and the time, place and purpose of all special sessions of such Public Service Board, shall be made available, in advance, to the public and news media as follows:

A. A notice shall be posted by the Secretary of the Public Service Board of the Public Service District at the front door of the Nicholas County Courthouse and at the front door of the place fixed for the regular meetings of the Public Service Board of the time and place fixed and entered of record by the Public Service Board for the holding of regularly scheduled sessions. If a particular regularly scheduled session is canceled or postponed, a notice of such cancellation or postponement shall be posted at the front doors of the Courthouse and the meeting place as soon as feasible after such cancellation or postponement has been determined upon.

B. A notice shall be posted by the Secretary of the Public Service Board at the front door to the Nicholas County Courthouse and at the front door of the place fixed for the regular meetings of the Public Service Board at least 48 hours before a special session is to be held, stating the time, place and purpose for which such special session shall be held. If the special session is canceled, a notice of such cancellation shall be posted at the front doors of the Courthouse and the meeting place as soon as feasible after such cancellation has been determined upon.

C. The form of notice for posting as to a special session may be generally as follows:

BIRCH RIVER PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL SESSION

The Public Service Board of Birch River Public Service District will meet in special session on _____, at _____ .m., prevailing time, at the Birch River Volunteer Fire Department, Birch River, West Virginia, for the following purposes:

1. To consider and act upon a proposed Bond Authorizing Resolution providing for the issuance of a _____ Bond, Series _____, of the District, in the principal amount of \$ _____, to provide funds for construction of _____ facilities of the District.

2.

Secretary-Treasurer

Date: _____

ARTICLE V

OFFICERS

Section 1. The officers of the Public Service Board shall be a Chairman, Vice Chairman, Secretary and Treasurer. The Chairman and Vice-Chairman shall be elected from the members of the Public Service Board. The Secretary and Treasurer need not be members of the Public Service Board, and may be the same person.

Section 2. The officers of the Public Service Board shall be elected each year by the members at the first meeting held in the month of January of such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected hereinabove provided.

ARTICLE VI

DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Public Service Board. He shall, together with the Secretary, sign the minutes of all meetings at which he shall preside. He shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him by the Board, by these Rules of Procedure, or prescribed by law. He shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. The Vice Chairman shall preside at all meetings from which the Chairman is absent.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. He shall, together with the Chairman, sign the minutes of the meetings at which he is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other writings and papers of the Board. He shall also perform such other duties as he may have under law by virtue of his office or as may be conferred upon him from time to time by the members of the Board.

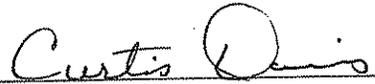
Section 4. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board.

ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present vote for the amendment; but no such change, alteration, amendment or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment or addition and a clear statement of the substance thereof be included in the written notice calling such meeting.

ADOPTED AND EFFECTIVE, the 5th day of October, 1998.


Chairman

10/01/98
073720/98001

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Birch River PSD
January 16, 2009

Minutes

Present at meeting: Libby Coffman, TG Griffith, Mike Davis, Terri Kiser,
Ray Tilley, Eddie Davis, Larry Brown

OLD BUSINESS

1. (Held over from previous month) Waiting to see if Tom Michael had had any contact regarding documents sent to Alison Fuentes Dodge regarding Westside Development property.
2. (Held over from previous month) Still no word from anyone regarding DOT permit for the Dille/Widen Extension that has already been installed from the Birch River System to Westside Development. Mike will check with FCR.
3. (Held over from previous months) Libby to contact Verizon for application procedures for obtaining new calling cards.
4. (Held over from previous months) Items from AML subgrant list still being completed.
5. Still waiting for Flatwoods/Canoe Run PSD to install double-stop meters for Birch River PSD.
6. Hydrant locks will be installed on selected hydrants within the Birch River System as soon as the Birch River VFD elects their new fire chief near the end of January.
7. Tank site and access road have now been resurveyed. Will post new map when completed when we receive it. In a related matter, Ray to check with Joel Nunes to see if either the access road right-of-way through the Mathis property or the Davis' road access and tank site have been duly signed and finalized yet.
8. Back flow malfunctions at main check valve above the main pump station has been allowing water to leak back through the pump at a rate of around 5 gal per minute thus accounting for the 25% to 30% unaccounted for water loss in the past 5 or 6 months. A new check valve from CI Thornberg is to be installed

moved that the agreement be adopted. Libby second. Motion carried.

3. The Board discussed the possibility of asking FCR for a water leak adjustment for the past 5-6 months for the high percentage of water loss (25%-30%) which would appear to be within the District's right since the BRPSD has been treated as a normal residential/commercial water user in past legal rate increases and adjustments that FCR has sought. It was agreed to wait until after the new check valve corrects the high volume of water loss before pursuing.
4. The Board received request from FCR about the possibilities of FCR taking over the Birch River PSD in the near future. Though this issue has been discussed before, at this time the Birch River PSD has no interest in being absorbed by FCR. With the current project extensions and upgrades the BRPSD has pending, the BR Board wants to assure that these projects are completed before any discussion about a take over is pursued. At such time as those projects are completed and on line, it might be more feasible for both PSD's that a merger be initiated. FCR currently does all of the BRPSD major maintenance, and handles all of our billing and new customer sign-ups anyway and with these new projects being added to the BR system, it means the District would have to employ additional workers either part-time or full-time. This request from FCR has come apparently because of the financial and revenue difficulties FCR is having. A merger with Birch River would greatly help FCR in that realm. For now, however, the issue is being tabled by this Board.
5. Mike brought before the Board for discussion the prospects of hiring Ralph Barnett to eventually take over the part-time employee duties for Eddie & Buford. After some discussion it was decided to wait until the February meeting to continue deliberations.
6. TG moved that the current PSD Board Officers retain their present positions for 2009. Libby seconded. Motion carried. Office holders for 2009:
 - Mike Davis--Chairman
 - Libby Coffman--Treasurer
 - TG Griffith--Secretary
7. Libby moved to pay the following bills:
 - \$160.88---Verizon
 - \$100.00---debt service account
 - \$100.00---depreciation account

BIRCH RIVER PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

EXCERPT OF MINUTES ON ADOPTION OF BOND
RESOLUTION, AND DRAW RESOLUTION

The undersigned SECRETARY of Birch River Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of the said Public Service District:

Birch River Public Service District met in regular session, pursuant to notice duly posted, on the 15th day of October, 2009, in Nicholas County, West Virginia, at the hour of 10:00 a.m.

PRESENT:	Mike Davis	Chairman
	T.G. Griffith	Secretary
	Libby Coffman	Board Member
	Pat Kelly	Steptoe & Johnson
	Katy Mallory	Steptoe & Johnson
	Tom Michael, Esquire	
	Ray Tilley, P.E,	E.L. Robinson
	Terri Kiser	Region IV
	Teresa Miller	USDA Rural Utilities Service

Mike Davis, Chairman, presided, and T.G. Griffith, acted as Secretary. The Chairman announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Chairman presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BIRCH RIVER PUBLIC SERVICE DISTRICT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$630,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY

FOR THE HOLDER OF THE BONDS; AND PROVIDING
WHEN THIS RESOLUTION SHALL TAKE EFFECT

and caused the same to be read and there was discussion. Thereupon, on motion duly made by Mike Davis and seconded by Libby Coffman, it was unanimously ordered that the said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairman presented a proposed Draw Resolution for the approval of invoices. Thereupon, on motion duly made by Mike Davis and seconded by Libby Coffman, it was unanimously ordered that the said Draw Resolution be adopted.

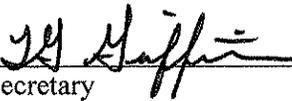
There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

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CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of Birch River Public Service District and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 19th day of October, 2009.


Secretary

WV MUNICIPAL BOND COMMISSION
 8 Capitol Street
 Terminal Building, Suite 500
 Charleston, WV 25301
 (304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: 19-Oct-09

ISSUE: Birch River Public Service District
Water Revenue Bonds, Series 2009 A (United States Department of Agriculture)

ADDRESS: P.O. Box 218, Birch River, West Virginia 26610 COUNTY: Nicholas

PURPOSE OF ISSUE:
 New Money: x
 Refunding: _____

ISSUE DATE: 19-Oct-09 REFUNDS ISSUE(S) DATED: NA
 CLOSING DATE: 19-Oct-09

ISSUE AMOUNT: \$630,000 RATE: 4.125%

1ST DEBT SERVICE DUE: NA 1ST PRINCIPAL DUE NA
 1ST DEBT SERVICE AMOUNT NA PAYING AGENT: Issuer

BOND COUNSEL: Firm: Steptoe & Johnson PLLC
 Contact: John Stump, Esquire
 Phone: (304) 353.8196

UNDERWRITERS COUNSEL: Firm: _____
 Contact: _____
 Phone: _____

CLOSING BANK: Bank: United Bank, Inc
 Contact: _____
 Phone: _____

ESCROW TRUSTEE: Firm: _____
 Contact: _____
 Phone: _____

KNOWLEDGEABLE ISSUER CONTACT: Contact: T.G. Griffith
 Position: Secretary
 Phone: (304) 332-5367

OTHER: Agency: United States Department of Agriculture
 Contact: Teresa A. Miller
 Position: Rural Development Specialist
 Phone: (304) 253-9597

DEPOSITS TO MBC AT CLOSE

By: _____	Wire _____	Accrued Interest: \$ _____
_____	Check _____	Capitalized Interest: \$ _____
_____	_____	Reserve Account: \$ _____
_____	_____	Other: \$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE

By: _____	Wire _____	To Escrow Trustee \$ _____
_____	Check _____	To Issuer \$ _____
_____	IGT _____	To Cons. Invest. Fund \$ _____
_____	_____	To Other: \$ _____

NOTES: Monthly debt service payments will be made by the District directly to the National Finance Office.
The Municipal Bond Commission will only hold the Series 2009 A Reserve Account. The first payment into the Reserve Account is due 24 months from the date of closing.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
 DOCUMENTS REQUIRED: _____
 TRANSFERS REQUIRED: _____

LOAN RESOLUTION
(Public Bodies)A RESOLUTION OF THE Board of DirectorsOF THE Birch River Public Service DistrictAUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING
PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS
Water

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO

WHEREAS, it is necessary for the Birch River Public Service District
(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

SIX HUNDRED THIRTY THOUSAND AND XX / 100 DOLLARS (\$630,000.00)pursuant to the provisions of Chapter 16, Article 13A, West Virginia Code ; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ 729,000.00

under the terms offered by the Government; that Chairman

and Secretary of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Yeas 3 Nays 0 Absent 0

IN WITNESS WHEREOF, the Board of Directors of the

Birch River Public Service District has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this 21st day of July, 2007

Birch River Public Service District

(SEAL)

By Curtis Davis
Curtis Davis

Title Chairman

Attest: T.G. Griffith
T.G. Griffith
Title Secretary

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as Secretary of the Birch River Public Service District

hereby certify that the Board of Directors of such Association is composed of

 members, of whom constituting a quorum, were present at a meeting thereof duly called and

held on the 21st day of July, 2007; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of October 19, 2009,
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been
rescinded or amended in any way.

Dated, this 19th day of October, 2009


T.G. Griffith

Title Secretary

WATER OR WASTE SYSTEM GRANT AGREEMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

THIS AGREEMENT dated February 8, 2008 between

Birch River Public Service District

a public corporation organized and operating under

Chapter 16, Article 13A, West Virginia Code

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under jurisdiction at an estimated cost of \$ 4,007,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 2,654,924 of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 2,654,924 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 1,352,076 or 33.74% percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act the purpose only of defraying a part not to exceed 33.74% percent of the development costs, as defined by applicable Rural Utilities Service Instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

All that real property associated with the construction of the water extension and upgrade, include above ground structures such as pump stations, water storage tanks and appurtenances thereto.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds, for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment (use continuation sheets as necessary).

N/A

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1. 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/97]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$1,352,076.00 which it will advance to Grantee to meet not to exceed 33.74% percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

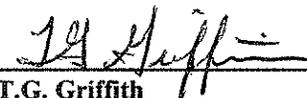
Chairman

and attested and its corporate seal affixed by its duly authorized

Secretary

Attest:

By:


T.G. Griffith

(Title) **Secretary**

By:


Curtis Davis

(Title) **Chairman**

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By:


TERESA A. MILLER

Rural Development Specialist

(Title)



west virginia department of environmental protection

Division of Land Restoration
Office of Abandoned Mine Lands
601 57th Street SE
Charleston, WV 25304
Telephone: (304)926-0485 / Fax (304)926-0458

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

August 14, 2008

Mr. Mike Davis
Birch River PSD
PO Box 218
Birch River, West Virginia 26610

Re: Dille/Widen Waterline Extension
AML ID# 227

Dear Mr. Davis:

As stated in a previous letter, the Dille/Widen Waterline Extension project is 88% eligible for funding by AML. After discussions with your Engineer, it was determined that an updated cost estimate and commitment amount was needed for filing purposes. As such, 88% of the bid cost of the construction of the AML-eligible portion (currently estimated at \$3,089,613.12) is eligible for funding by AML. In addition, AML will participate in approved Change Orders for the project by applying the 88% to the total eligible Change Order amount.

AML funds are released according to a project's priority score. Currently, the priority score for your project is 143.28, which includes 60 (sixty) Readiness to Proceed (RTP) points. This is project number five that is eligible for AML funds. In order to increase your priority score, the following RTP items must be received by AML: 1) Preliminary Title of Opinion, certifying that 100% of Properties and 80% of ROWs have been obtained and 2) PSC Certificate. Each of the two remaining items above adds 20 points to your priority score. Once all RTP items have been received and approved by AML, your priority score will be 243.28, which is currently high enough for immediate funding.

After AML receives all of the required items above, funding will be assigned to a grant year, and your project will be transferred to the Sub-Grant Team. At the same time, a Sub-Grant Application will be forwarded to you with a list of documentation required to be approved by the Sub-Grant Team before soliciting bids.

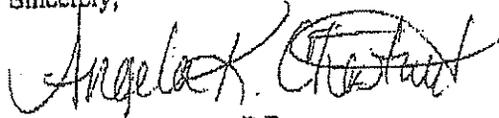
Promoting a healthy environment.

Mr. Mike Davis
Birch River PSD
Dille/Widen Waterline Extension ID# 227
August 14, 2008
Page 2

Finally, in order to assist AML with the preparation of an environmental assessment, copies of any letters to and responses from environmental clearinghouses (i.e. SHPO, DNR, Corps, etc.) would be appreciated. This can potentially shorten the amount of time required to receive OSM approval of the project.

It is the agency's goal to utilize all of the money in each grant year for construction of projects that benefit the West Virginia citizens. AML is encouraging all of its project coordinators to work toward the five Readiness to Proceed criteria, so that funding is available first to those who are ready. If you have any questions or would like to discuss the steps necessary to complete your particular project, please contact me at (304) 926-0499, Ext. 1459.

Sincerely,



Angela K. Chestnut, P.E.
Waterline Administrator

CC: Mark McGettigan, P.E., E. L. Robinson

RESOLUTION OF THE BIRCH RIVER PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO DESIGN, CONSTRUCTION, AND OTHER SERVICES FOR THE WIDEN-DILLE WATERLINE EXTENSION PROJECT AND AUTHORIZING PAYMENT THEREOF,

Whereas, The Birch River Public Service District has reviewed the invoices attached hereto and incorporated herein by reference relating to the construction of the Widen-Dille Waterline Extension Project funded in part by the DEP Abandoned Mine Lands (AML) and the United States Department of Agriculture/ Rural Utilities Service (RUS) finds as follows:

- a) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement heretofore made.
- b) That each item for which the payment is proposed to be paid 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.
- d) That payment for each of the items proposed is due and owing as the date hereof.

WHEREAS, The Birch River Public Service District will deposit the AML Grant Funds and RUS Loan/Grant Funds into the Construction Account and will apply said funds to the payment of eligible invoices received by the District. The District will provide AML and RUS with copies of said invoices.

NOW, THEREFORE, BE IT RESOLVED by the Birch River Public Service District, it hereby authorizes and directs the payment of the attached invoices as follows:

DESCRIPTION OF WORK	INVOICE AMOUNT	RUS	AML
TECHNICAL SERVICES ENGINEERING E.L. Robinson 5088 Washington Street, West Charleston, WV 25313 Invoice #1006656-1	\$215,000.00	215,000.00	✓
TECHNICAL SERVICES PROJECT CONTINGENCY Reimbursement to: Region 4 P&DC 885 Broad Street, Suite 100 Summersville, WV 26651 Laser checks	\$87.03	87.03	
TECHNICAL SERVICES LEGAL Thomas R. Michael Attorney At Law P.O. Box 250 Lost Creek, WV 26385 Invoice #10695	\$10,311.07	10,311.07	

RESOLUTION OF THE BIRCH RIVER PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO DESIGN, CONSTRUCTION, AND OTHER SERVICES FOR THE WIDEN-DILLE WATERLINE EXTENSION PROJECT AND AUTHORIZING PAYMENT THEREOF,

DESCRIPTION OF WORK	INVOICE AMOUNT	RUS	AML
TECHNICAL SERVICES PERMITS AND LEGAL ADS Beckley Newspapers P.O. Box 2398 Beckley, WV 25802 Invoice # 10542654	\$194.51	194.51	
TECHNICAL SERVICES ADMINISTRATIVE Region 4 P&DC 885 Broad Street, Suite 100 Summersville, WV 26651 Services, April 2008 Services, May 2008 Services, June 2008 Services, July 2008 Services, August 2008 Services, Sept. 2008 Services, Oct. 2008 Services, Dec. 2008 Services, March 2009 Services, April 2009 Services, May 2009 Services, June 2009 Services, July 2009 Services, August 2009	\$9,500.99	9,500.99	
TECHNICAL SERVICES LAND & ROWS Joel J. Nunes Mail to: Thomas R. Michael Attorney At Law P.O. Box 250 Lost Creek, WV 26385 Invoice #1 04/3/09 Invoice #2 09/11/09	\$8,575.00	8,575.00	

