

BIRCH RIVER PUBLIC SERVICE DISTRICT

**Water Revenue Bonds, Series 2014 A
(United States Department of Agriculture)**

BOND RESOLUTION

Table of Contents

**ARTICLE I
STATUTORY AUTHORITY, FINDINGS
AND DEFINITIONS**

| | |
|--------------|---------------------------------------|
| Section 1.01 | Authority for this Resolution |
| Section 1.02 | Findings and Determinations |
| Section 1.03 | Bond Legislation Constitutes Contract |
| Section 1.04 | Definitions |

**ARTICLE II
AUTHORIZATION OF
ACQUISITION AND
CONSTRUCTION OF THE PROJECT**

| | |
|--------------|--|
| Section 2.01 | Authorization of Acquisition and Construction of the Project |
|--------------|--|

**ARTICLE III
AUTHORIZATION, TERMS, EXECUTION,
REGISTRATION AND ISSUE OF BONDS**

| | |
|--------------|---|
| Section 3.01 | Authorization of Bonds |
| Section 3.02 | Description of Bonds |
| Section 3.03 | Negotiability, Registration, Transfer and Exchange of Bonds |
| Section 3.04 | Bond Registrar |
| Section 3.05 | Execution of Bonds |
| Section 3.06 | Bonds Mutilated, Destroyed, Stolen or Lost |
| Section 3.07 | Bonds Secured by Pledge of Net Revenues |
| Section 3.08 | Form of Bond |
| | FORM OF BOND |

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
- Section 4.02 Bond Proceeds; Project Construction Account
- Section 4.03 Covenants of the Issuer as to System Revenues and Funds

ARTICLE V
GENERAL COVENANTS, ETC.

- Section 5.01 General Statement
- Section 5.02 Rates
- Section 5.03 Sale of the System
- Section 5.04 Issuance of Additional Parity Bonds or Obligations
- Section 5.05 Insurance and Bonds
- Section 5.06 Statutory Mortgage Lien
- Section 5.07 Events of Default
- Section 5.08 Enforcement
- Section 5.09 Fiscal Year; Budget
- Section 5.10 Compensation of Members of Governing Body
- Section 5.11 Covenant to Proceed and Complete
- Section 5.12 Books and Records; Audits
- Section 5.13 Maintenance of System
- Section 5.14 No Competition

ARTICLE VI
RATES, ETC.

- Section 6.01 Initial Schedule of Rates and Charges; Rules

ARTICLE VII
MISCELLANEOUS

- Section 7.01 Payment of Bonds
 - Section 7.02 Modification or Amendment
 - Section 7.03 Delivery of Bonds
 - Section 7.04 Severability of Invalid Provisions
 - Section 7.05 Conflicting Provisions Repealed
 - Section 7.06 Table of Contents and Headings
 - Section 7.07 Covenant of Due Procedure, Etc.
 - Section 7.08 Effective Time
- SIGNATURES
CERTIFICATION

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 \$236,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2014 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 County.

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 acquired and constructed certain additions, improvements and extensions to the existing waterworks facilities of the Issuer, consisting water line extension to serve residents east of Birch River

along Highway 82 and in the Anthony Creek area of Nicholas County together with all necessary appurtenances (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 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 Series 2014 A Bonds and the Prior Bonds (hereinafter defined) and all funds and accounts and other payments provided for herein.

D. The estimated maximum cost of the acquisition and construction of the Project is \$2,023,805 of which \$236,000 will be obtained from the proceeds of sale of the Series 2014 A Bonds, herein authorized; \$1,204,022 will be obtained as a grant from the Purchaser; and approximately \$583,783 will be obtained from an Abandoned Mine Lands grant.

E. It is necessary for the Issuer to issue its Water Revenue Bonds, Series 2014 A (United States Department of Agriculture), in one or more series, in the aggregate principal amount of \$236,000 (the "Series 2014 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 2014 A Bonds prior to, during and for six months after completion of such acquisition and construction 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 2014 A Bonds as to liens, pledge and source of and security for payment being the Issuer's: (i) Water Revenue Bond, 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"); and (ii) Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), dated October 19, 2009, issued in the original aggregate principal amount of \$630,000 (the "Series 2009 A Bonds"), (collectively, the "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 2014 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 2014 A Bonds be sold to the Purchaser, pursuant to the terms and provisions of the Letters of Conditions, dated December 12, 2008, 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 2014 A Bonds, or will have so complied prior to issuance of the Series 2014 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 2014 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 2014 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 2014 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 (E) 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 December 12, 2008, 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 2014 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, collectively, the Series 1998 Bonds and the Series 2009 A Bonds.

“Prior Resolutions” 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 Bond, 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 Issuer's Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), dated October 19, 2009, issued in the original aggregate principal amount of \$630,000.

“Series 2014 A Bonds” means the Water Revenue Bonds, Series 2014 A (United States Department of Agriculture), authorized hereby to be issued pursuant to this Bond Legislation.

“Series 2014 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 2014 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 \$2,023,805, 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 \$2,023,805 of which \$236,000 will be obtained from the proceeds of sale of the Series 2014 A Bonds, herein authorized; \$1,204,022 will be obtained as a grant from the Purchaser; and approximately \$583,783 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 2014 A Bonds of the Issuer, to be known as “Water Revenue Bonds, Series 2014 A (United States Department of Agriculture)”, are hereby authorized to be issued in the aggregate principal amount of \$236,000, for the purpose of (i) paying 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 2014 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 2014 A Bonds shall bear interest from the date of delivery, payable monthly at the rate of 3.25% 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 \$904, 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 2014 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 2014 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 2014 A Bonds, and the right to principal of and stated interest on the Series 2014 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 2014 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 2014 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 2014 A Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2014 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 2014 A Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2014 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 2014 A Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2014 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 2014 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 2014 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 2014 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 2014 A Bonds shall cease to be such officer of the Issuer before the Series 2014 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 2014 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 2014 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 2014 A Bonds so surrendered shall be canceled and held for the account of the Issuer. If the Series 2014 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 2014 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 2014 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 2014 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 2014 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:

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(FORM OF BOND)

UNITED STATES OF AMERICA
BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2014 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$ _____

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 _____ (\$ _____), 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 _____, 20____ (30 days following delivery of the Bond) and continuing on the ____ day of each month to and including _____, 20____ (24 months after the date hereof), and thereafter monthly installments covering principal and interest of \$ _____ beginning _____, 20____, to and including _____, 20____ (40 years from the date of this Bond), provided, that the final installment shall be paid 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 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 _____, 2014, 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:

(I) WATER REVENUE BOND, 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"); AND

(II) WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 19, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$630,000 (THE "SERIES 2009 A BONDS"), (COLLECTIVELY, THE "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.

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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

[CORPORATE SEAL]

Chairman, Public Service Board
P.O. Box 218
Birch River, West Virginia 26610

ATTEST:

Secretary, Public Service Board

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 Resolutions) 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 Resolutions and hereby continued);
- (2) Reserve Fund (established by Prior Resolutions for the Series 1998 Bonds and hereby continued);
- (3) Renewal and Replacement Fund (established by Prior Resolutions and hereby continued); and
- (4) Series 2014 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 Resolutions) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and from each other:

- (1) Series 2009 A Bonds Reserve Account (established by Prior Resolutions and hereby continued); and
- (2) Series 2014 A Bonds Reserve Account.

Section 4.02. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Series 2014 A Bonds shall be deposited upon receipt by the Issuer in the Series 2014 A Bonds Project Construction Account. The monies in the Series 2014 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 2014 A Bonds Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Monies in the Series 2014 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 2014 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 2014 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 2014 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 2014 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 2014 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2014 A Bonds Reserve Account, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2014 A Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the Holders of the Series 2014 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 2014 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 2014 A Bonds, the amount required to amortize the principal of the Series 2014 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 amount required by the Prior Resolutions to be deposited in the Series 1998 Bonds Reserve Account; (ii) remit to the Commission the amount required by the Prior Resolutions to be deposited in the Series

2009 A Bonds Reserve Account; and (iii) 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 2014 A Bonds Reserve Account, an amount equal to 10% of the monthly payment amount, until the amount in the Series 2014 A Bonds Reserve Account equals the Series 2014 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2014 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 2014 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 Qualified Investments. 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 2014 A Bonds Reserve Account shall be sufficient to prepay the Series 2014 A Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2014 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 2014 A Bonds Reserve Account. All amounts required for the Series 2014 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 2014 A Bonds and the interest thereon, on a parity with the Prior Bonds.

The Series 2014 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 2014 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 2014 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 2014 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 2014 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 2014 A Bonds, provide evidence that there will be bona fide users on the System upon 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 2014 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2014 A Bonds Reserve Account sums sufficient to prepay the entire remaining unpaid principal of the Series 2014 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 2014 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 2014 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 2014 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. So long as the Series 2014 A Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the system, or any part thereof without the prior written consent of the Purchaser. Such consent will provide for the 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 2014 A Bonds unless the provisions contained in the Prior Resolutions respecting issuance of Parity Bonds have been satisfied.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2014 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 2014 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 2014 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 2014 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 2014 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 2014 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 2014 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 2014 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 2014 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 2014 A Bonds.

Section 5.09. Fiscal Year; Budget. While the Series 2014 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 2014 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 December 13, 2012 which became Final Order of the Public Service Commission of West Virginia on January 2, 2013 in Case No. 12-0652-PWD-19A 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 2014 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 2014 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 2014 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 2014 A Bonds, the Issuer may not defease the Series 2014 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 and Secretary of the Governing Body are hereby authorized and directed to cause the Series 2014 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 2014 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); and provided that in the event of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds or any portion thereof are Outstanding.

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.

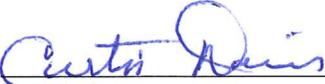
Section 7.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular 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.

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Section 7.08. Effective Date. This Resolution shall take effect immediately upon its adoption.

Adopted this 18th day of December, 2014.

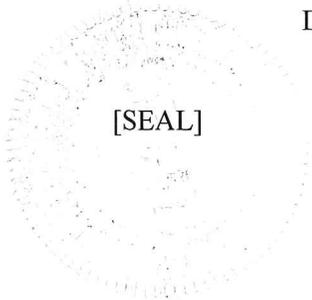
BIRCH RIVER PUBLIC SERVICE DISTRICT

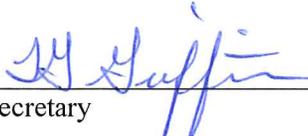
By:  _____
Its: Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of BIRCH RIVER PUBLIC SERVICE DISTRICT on the 18th day of December, 2014.

Dated: December 22, 2014.




Secretary

073720.00002



United States Department of Agriculture

Rural Development

December 4, 2014

West Virginia State Office

1550 Earl Core Road Suite 100 Morgantown, WV 26505

Voice 304.284.4860 Fax 304.284.4892

Curtis Davis, Chairman
Birch River Public Service District
P. O. Box 509
Birch River, WV 26610

RE: Amendment No. 1 to Letter of Conditions

Dear Mr. Davis:

This letter, with Attachment No. 1 amends the letter of conditions dated December 12, 2008 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 \$236,000, an initial RD grant in the amount of \$704,022, a subsequent RD grant in the amount of \$500,000 and other funding in the amount of \$583,783 for a total project cost of \$2,023,805. 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 December 12, 2008 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)

The conditions referred to above are as follows:

- 1. Public Service Commission Approval - You must obtain PSC approval of the project's proposed financing and user rates as may result from this amendment to the letter of conditions.

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

2. Users – This conditional commitment is based upon you providing evidence that you will have at least 478 bona fide users on the proposed system when it has been completed and is placed in operation.
3. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

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

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RD 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 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, RD 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: Tracey Rowan, Area Director, Beckley, WV
 ATTN: Teresa Miller, Area Specialist

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

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

✓ Steptoe & Johnson, PLLC
 P. O. Box 1588
 Charleston, WV 25336

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

WVDEP-Abandoned Mine Lands
 601 57th Street S.E.
 Charleston, WV 25304

Attachment No. 1 to Amended Letter of Conditions
 For: Birch River Public Service District
 Date: December 4, 2014

Project Construction Budget

| <u>PROJECT COST</u> | <u>AML GRANT</u> | <u>RUS SUB Grant</u> | <u>RUS GRANT</u> | <u>RUS LOAN</u> | <u>TOTAL</u> |
|---------------------|----------------------|--------------------------|----------------------|----------------------|------------------------|
| CONSTRUCTION | \$ 583,783.00 | \$ 344,195.00 | \$ 704,022.00 | | \$ 1,632,000.00 |
| CONTINGENCY | | \$ 52,411.00 | | | \$ 52,411.00 |
| LAND & RIGHTS | | | | \$ 1,000.00 | \$ 1,000.00 |
| LEGAL FEES | | | | \$ 15,000.00 | \$ 15,000.00 |
| BOND COUNSEL | | | | \$ 10,250.00 | \$ 10,250.00 |
| ACCOUNTING | | | | \$ 4,800.00 | \$ 4,800.00 |
| ENGINEERING FEES | | \$ 83,394.00 | | \$ 146,606.00 | \$ 230,000.00 |
| Basic - \$ 165,000 | | | | | |
| Insp. - \$ 55,000 | | | | | |
| Special - 10,000 | | | | | |
| INTEREST | | | | \$ 15,344.00 | \$ 15,344.00 |
| PERMITS | | | | \$ 3,000.00 | \$ 3,000.00 |
| ADMINISTRATION | | | | \$ 40,000.00 | \$ 40,000.00 |
| PROJECT CONTG. | | \$ 20,000.00 | | | \$ 20,000.00 |
| TOTAL | \$ 583,783.00 | \$ 500,000.00 | \$ 704,022.00 | \$ 236,000.00 | \$ 2,023,805.00 |



November 21, 2014

Curtis Davis, Chairman
Birch River Public Service District
P. O. Box 509
Birch River, WV 26610

Dear Mr. Davis:

The pre-closing date for the PSD's WV82/Anthony Creek Water Project has been established as December 18, 2014. The pre-closing will begin at 10:00 a.m. at the Birch River Ruritan Building in Birch River followed by the pre-construction conference at 11:00 a.m.

Reference is made to our Letter of Conditions dated December 12, 2008 and December 18, 2014. All of the requirements of those letters must be met.

Many of the aforementioned items have already been addressed. Those remaining items to be satisfied prior to loan closing include:

1. The PSD's attorney must furnish Form RD 442-22, "Opinion of Counsel Relative to Rights of Way," showing no exceptions. This form should be dated December 22, 2014.
2. The PSD's attorney must furnish Form RD 1927-10, "Final Title Opinion," on all land(s) being acquired. In addition, the attorney must provide a separate Final Title Opinion(s) covering all existing property owned by the PSD. The opinion(s) should be dated December 22, 2014.
3. The PSD's attorney must furnish an updated narrative opinion addressing all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. The narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled. The opinion should be dated December 22, 2014.

Rural Development • Beckley Area Office
481 Ragland Rd • Beckley WV 25801

Voice (304) 253-9597 • Toll Free (800) 295-8228 • Fax (304) 929-2025 • TDD (304) 284-4836 • Web <http://www.rurdev.usda.gov/wv>

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

4. The permit from the West Virginia Department of Highways must be on hand at the closing. The PSD should proceed to obtain necessary bond and forward same to the WVDOH requesting the permit be issued.
5. A certificate from the PSD's accountant that the accounts and records required by the bond resolution and the PSC have been established and are operational. The chart of accounts and record keeping books must be available for review at loan closing.
6. The PSD must provide evidence that it has acquired insurance and bond coverage in accordance with item 12 of the Letter of Conditions.
7. The PSD must furnish evidence that it provides State Workers' Compensation Insurance.

If you have any questions regarding these or any other matters pertaining to your loan, please contact this office.

Sincerely,

TERESA A. MILLER
Rural Development Specialist

Enclosures

cc: State Director, Rural Development, Morgantown, WV
Thomas R. Michael, Attorney at Law, P. O. Box 250, Lost Creek, WV
John Stump, Steptoe & Johnson, Bond Counsel, Charleston, WV
Smith, Cochran, & Hicks, CPA's, 405 Capital St., Suite 908, Charleston, WV
Ray Tilley, E.L. Robinson, 207 Brookshire Lane, Beckley, WV
Region IV Planning and Development Council, 885 Broad St., Summersville, WV



United States Department of Agriculture

Rural Development

June 28, 2013

West Virginia State Office

1550 Earl Core Road Suite 100 Morgantown, WV 26505

Voice 304.284.4860 Fax 304.284.4892

Sandra Squire, Executive Secretary West Virginia Public Service Commission P.O. Box 812 Charleston, WV

RECEIVED 13 JUL -1 AM 9:50 W VA PUBLIC SERVICE COMMISSION SECRETARY'S OFFICE

13-0469

RE: Case No. 13-004669-PWD-CN Birch River Public Service District Water Extension Project

Dear Ms. Squire:

Reference is made to Case No. 13-0469-PWD-CN in which the Birch River Public Service District is proposing to extend water service to residents east of Birch River along Highway 82 and in the Anthony Creek area of Nicholas County. The PSD has received funding from our agency in the amount of a \$236,000 loan and a \$704,022 grant. The PSD has requested in additional \$377,000 in grant funds in order to proceed with the construction of the project. It is our understanding that the additional funding is necessary due to increases in project costs from the time of our original commitment in 2008.

It has been determined that the PSD does qualify for the additional grant funding and our agency is in receipt of all items necessary to proceed with funding. It is the intent of our agency to commit the additional grant funds to this project. We would like for the PSD to be able to proceed with advertising for construction bids prior to the actual obligation of the funds. That way, if there is a bid overrun, we will only need to provide one subsequent grant for the project that would cover both the overrun and the \$377,000. If there is a bid underrun, we would adjust the amount of the subsequent grant accordingly. This would be beneficial for the PSD as well as our agency to save on costs associated with travel and holding additional meetings if we could have one subsequent grant rather than the possibility of two.

Please be assured that we are committed to providing the additional grant funds. We hope that the funding commitment outlined in this letter will allow the project to proceed through the West Virginia Public Service Commission's certificate process. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

BOBBY LEWIS State Director

cc: Page 2

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

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

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

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

Region 4 Planning and Development Council
ATTN: W.D. Smith, Executive Director
885 Broad Street, Suite 100
Summersville, WV 26651

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

W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

13 JUL - 1 AM 9:50

RECEIVED



United States Department of Agriculture
Rural Development
West Virginia State Office

RECEIVED
13 JUL 12 PM 12:15
WV VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

October 24, 2011

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

13-0469-PWD-CN

RE: WV Route 82 / Anthony Creek
Water Extension Project

Dear Mr. Davis:

Reference is made to your recent request to our agency for additional grant funding in the amount of approximately \$370,000 for the referenced project. It is our understanding that the additional funding is necessary due to increases in project construction costs. RD funding that was committed to the project in 2008 includes a loan of \$236,000 and a grant of \$704,022.

It has been determined that the PSD does qualify for the additional grant funding and our agency is in receipt of all items necessary to proceed with funding. It is the intent of our agency to commit the additional grant funds to this project once our allocation of funds is available for Fiscal Year 2012. We anticipate that this will occur sometime in the first quarter of Calendar Year 2012.

We hope that the funding commitment outlined in this letter will allow the project to proceed through the West Virginia Public Service Commission's certificate process.

We appreciate the opportunity to be of assistance to you. If you have any questions, please do not hesitate to contact me.

Sincerely,

BOBBY LEWIS
State Director

cc: Page 2

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

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

Region 4 Planning and Development Council
ATTN: W.D. Smith, Executive Director
885 Broad Street, Suite 100
Summersville, WV 26651

West Virginia Public Service Commission
Water and Wastewater Division
P.O. Box 812
Charleston, WV 25323

RECEIVED
13 JUL 12 PM 12:15
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE



United States Department of Agriculture
Rural Development
West Virginia State Office

October 24, 2011

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

RE: WV Route 82 / Anthony Creek
Water Extension Project

Dear Mr. Davis:

Reference is made to your recent request to our agency for additional grant funding in the amount of approximately \$370,000 for the referenced project. It is our understanding that the additional funding is necessary due to increases in project construction costs. RD funding that was committed to the project in 2008 includes a loan of \$236,000 and a grant of \$704,022.

It has been determined that the PSD does qualify for the additional grant funding and our agency is in receipt of all items necessary to proceed with funding. It is the intent of our agency to commit the additional grant funds to this project once our allocation of funds is available for Fiscal Year 2012. We anticipate that this will occur sometime in the first quarter of Calendar Year 2012.

We hope that the funding commitment outlined in this letter will allow the project to proceed through the West Virginia Public Service Commission's certificate process.

We appreciate the opportunity to be of assistance to you. If you have any questions, please do not hesitate to contact me.

Sincerely,

BOBBY LEWIS
State Director

cc: Page 2

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4838
Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
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).



Engineer
NV/82 - Anthony Creek

United States Department of Agriculture
Rural Development
West Virginia State Office

December 12, 2008

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 9 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 \$236,000, an RUS grant in the amount of \$704,022, and other funding in the amount of \$641, 578, for a total project cost of \$1,581,600. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Lands Program.

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. All parties may access our web-site located at www.usda.gov/rus/water/ for the following:

- a. RUS Instruction 1780
- b. RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance"
- c. RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"
- d. RUS Bulletin 1780-31, "Water Programs Compliance Supplement For OMB Circular A-133 Audits"

75 High Street, Federal Building, Suite 320, Morgantown, WV 26505-7500
304.284.4860 • 1.800.295.8228 • 304.284-4893 • TTY/TDD 304.284.4838 • Web: <http://www.rurdev.usda.gov>

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Government Auditing Standards (Revision 2007) (Accountant Copy) may be accessed at www.gao.gov/govaud/ybk01.htm.

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
- Attachment No. 3 – Water Users Agreement
- Attachment No. 4 – Declination Statement (Applicant and Attorney Copies)
- Attachment No. 5 – Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way” (Attorney Copy)
- Attachment No. 6 – Sample Credit Agreement (Applicant Copy)
- Attachment No. 7 – Form RD 1927-9, “Preliminary Title Opinion” (Attorney Copy)
- Attachment No. 8 – Form RD 1927-10, “Final Title Opinion” (Attorney Copy)
- Attachment No. 9 – Various other RD forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. **Fund Usage** – Funds obligated under the terms of this letter of conditions are committed on the basis that your project will proceed to the construction stage in an expedient manner. In accordance with RUS Staff Instruction 1782-1, Section 1782.20(u)(5), any funds not disbursed within 60 months from the date of obligation will be de-obligated and returned to the Department of Treasury for further disposition to other RUS project applicants. In the event that USDA determines that your project has not progressed within the five (5) year timeline and that funds will be recaptured, you will be given appeal rights and due process to document reasons why you believe the decision to de-obligate your project funds is not justified.
2. **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 3.625% interest rate and a monthly amortization factor of .00405, which provides for a monthly payment of \$956.00. 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 or time.

3. Security – The loan must be secured by a statutory lien of shared first 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.
4. Users – This conditional commitment is based upon you providing evidence that you will have at least 524 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 74 signed user agreements and a signed certification from you that identifies and attests to the number of users actually connected to and using the District'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 will be used. Each user signing an agreement must make a user contribution of \$50.00. 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 District 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.

5. 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.
6. Engineering Services – It will be necessary for you to obtain the services of an engineer. EJCDC No. 510-FA, “Standard Form of Agreement between Owner and Engineer for Professional Services” (2002 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.
7. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience “RUS Legal Services Agreement” is enclosed for your use.
8. 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 (RD Instruction 1780) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your District. “Government Auditing Standards” (Revised 2007) and RUS Bulletins 1780-30 and 1780-31 outline audit requirements. This information is available on the websites referenced on pages 1 and 2 of this letter.

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.

9. 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 District 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 District'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

District has already acquired real property(s) (land or facilities), the District's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.

10. 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
- State Department of Health
- Department of Environmental Protection
- Corps of Engineers
- Public Land Corporation

11. 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.

12. Insurance and Bonding Requirements – Prior to loan closing or start of construction, whichever occurs first, you must acquire the types of insurance and bond coverage shown below. The use of deductibles may be allowed providing you have the financial resources to cover potential claims requiring payment of the deductible. RD strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of RD to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. General Liability Insurance – This should include vehicular coverage.
- 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.

13. Environmental Requirements –

Project Modifications – The project as proposed has been evaluated to be consistent with all applicable environmental requirements. If the project or any project element deviates from or is modified from the original approved project, additional environmental review may be required.

14. Vulnerability Assessments (VA) and Emergency Response Plans (ERP) –

Congress enacted the Public Health Security and Bioterrorism Preparedness Response Act of 2002, Public Law 107-188 (Bioterrorism Act). The Bioterrorism Act amended the Safe Drinking Water (SDWA) to require all medium and large sized community water systems (serving populations greater than 3,300) to assess vulnerability to terrorist attack and develop emergency plans for response to such

an attack. Medium and large community water systems are being monitored by the U.S. EPA for completion of VA's and ERP's.

Rural Development requires all financed water and wastewater systems to have a vulnerability assessment (VA) and an emergency response plan (ERP) in place.

New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operations. A certification that a VA is complete must be submitted within one year of the start of operations. All other borrowers must provide a certification that a VA and ERP are complete prior to bid authorization.

You will also be required to provide a certification that the VA and ERP is complete and is current every three years after the start of operations. RD does not need or want a copy of the VA or ERP. The requested certification will be sufficient to meet our needs. Technical assistance providers are available to provide you with on site assistance if desired.

15. Civil Rights & Equal Opportunity – You should be aware of and will be required to comply with other federal statute requirements including but not limited to:

Section 504 of the Rehabilitation Act of 1973 – Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RD financial assistance.

Civil Rights Act of 1964 – All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and subpart E of part 1901 of this title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by paragraph 1901.202(e) of this title.

The Americans with Disabilities Act (ADA) of 1990 – This Act (42 U.S.C. 12101 *et seq.*) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public.

Age Discrimination Act of 1975 – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

RD financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

16. Contract Documents, Final Plans and Specifications –

a. The contract documents should consist of the following:

(1) EJCDC Document No. C-521, 2002 Edition, “Suggested 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.

(2) “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 (September 10, 2003 Version),” is available on the website referenced on page 1 of this letter.

b. The contract documents must provide, as a minimum, the following insurance:

(1) Liability Insurance – Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the District and its engineer. EJCDC Document C-710, “Standard General Conditions of the Construction Contract” (Funding Agency Edition) and Exhibit G to RUS Bulletin 1780-26, “Supplementary Conditions” both suggest 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.

(2) 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.

(3) 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.

17. 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.
18. 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. 6).
19. 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 District, over 30 day periods. Funds will be disbursed by electronic transfer of funds.

Any RD grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account except as follows:

- a. Federal grant awards (includes all federal funding sources) are less than \$120,000 per year.
- b. The best available interest bearing account would not be expected to earn in excess of the following:

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.
- c. The depository would require a minimum balance so high that it would not be feasible.

The District 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 District 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.

20. Water Purchase Contract – You propose to purchase treated water from the 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.
21. 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.
22. 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”
 - RD 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”
23. 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.

24. 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, and would be applied as an extra payment toward the loan balance.

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,

Cheryl L. Wolfe
for RICKIE E. RICE
State Director

Enclosures

cc: Area Specialist
Beckley, WV

Tetrick & Bartlett

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

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

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

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

WVDEP – Abandoned Mine Lands
and Reclamation
6010 57th Street, S.E., Box 20
Charleston, WV 25304-2345

Attachment No. 1 to Letter of Conditions
 For: Birch River Public Service District
 Date: December 12, 2008

Project Construction Budget

| <u>PROJECT COST</u> | <u>AML</u> | <u>RUS GRANT</u> | <u>RUS LOAN</u> | <u>TOTAL</u> |
|---------------------|-------------------|-------------------|-------------------|---------------------|
| CONSTRUCTION | \$ 641,578 | \$ 486,220 | \$ 40,226 | \$ 1,168,024 |
| CONST. CONTINGENCY | | \$ 81,762 | | \$ 81,762 |
| LAND & RIGHTS | | | \$ 5,000 | \$ 5,000 |
| LEGAL FEES | | \$ 3,000 | \$ 12,000 | \$ 15,000 |
| BOND COUNSEL | | | \$ 10,250 | \$ 10,250 |
| ACCOUNTING | | | \$ 4,800 | \$ 4,800 |
| ENGINEERING FEES | | \$ 98,000 | \$ 132,000 | \$ 230,000 |
| Basic - \$165,000 | | | | |
| Insp. - \$55,000 | | | | |
| Special - \$10,000 | | | | |
| INTEREST | | | \$ 16,724 | \$ 16,724 |
| PERMITS | | | \$ 15,000 | \$ 15,000 |
| EQUIPMENT | | | | \$ - |
| PROJECT CONTG. | | \$ 35,040 | | \$ 35,040 |
| TOTAL | \$ 641,578 | \$ 704,022 | \$ 236,000 | \$ 1,581,600 |

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 |

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

Attachment No. 1 to Letter of Conditions
 For: Birch River Public Service District
 Date: December 12, 2008

**Birch River PSD
 USE AND INCOME ANALYSIS
 EXISTING SYSTEM**

| Blocking | Cust. | Gal/ Mo. | Minimum Bills | First 3,000 | Over 3,000 | TOTAL REVENUE |
|-------------------------|---------------|---------------|---------------------|---------------------|---------------------|----------------------|
| 0 - 3,000 | 164 | 286.50 | 164 | | | |
| Over 3,000 | 72 | 487.75 | | 216.00 | 271.75 | |
| Monthly Total | 236.00 | 774.25 | 164.00 | 216.00 | 271.75 | |
| Proposed Rates | | | \$ 27.30 | \$ 9.10 | \$ 9.10 | |
| Monthly Revenues | | | \$ 4,477.20 | \$ 1,965.60 | \$ 2,472.93 | \$ 8,915.73 |
| Annual Revenues | | | \$ 53,726.40 | \$ 23,587.20 | \$ 29,675.10 | \$ 106,988.70 |

Annual Revenue \$106,988.70
 Adjustment Factor 1.00593988
 Adjusted Annual Revenue \$107,624

Birch River PSD
USE AND INCOME ANALYSIS
Dille/Widen Extension

| Blocking | Cust. | Gal/ Mo. | Minimum Bills | FIRST 3,000 | OVER 3,000 | TOTAL REVENUE |
|------------------|-------|-------------|------------------|----------------|---------------|------------------|
| 0 - 3,000 | 150 | 397.50 | 150 | | | |
| Over 3,000 | 64 | 352.00 | | 192 | 160 | |
| Monthly Total | 214 | 749.50 | 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.

Birch River PSD
 USE AND INCOME ANALYSIS
 WV Route 82/Anthony Creek Extension

| Blocking | Cust. | Gal/ Mo. | Minimum Bills | FIRST | OVER | TOTAL REVENUE |
|------------------|-------|-------------|------------------|-------------|-------------|------------------|
| 0 - 3,000 | 52 | 156.00 | 52 | | | |
| Over 3,000 | 22 | 121.00 | | 66.00 | 55.00 | |
| Monthly Total | 74 | 277.00 | 52 | 66 | 55 | |
| Proposed Rates | | | \$ 27.30 | \$ 9.10 | \$ 9.10 | |
| Monthly Revenues | | | \$ 1,419.60 | \$ 600.60 | \$ 500.50 | \$ 2,520.70 |
| Annual Revenues | | | \$17,035.20 | \$ 7,207.20 | \$ 6,006.00 | \$ 30,248.40 |

74 is 80% of potential customers

It is assumed that 52 customers will use 3,000 gallons or less and 22 customers will use 5,500 gallons based on current historical patterns.

Birch River Public Service District
OPERATING BUDGET

OPERATING INCOME

| | | |
|------------------------|------------|-------------------|
| Metered Sales | \$ 225,450 | |
| Penalties | \$ 3,789 | |
| Other Income | \$ 5,947 | |
| TOTAL OPERATING INCOME | | <u>\$ 235,186</u> |

NON OPERATING INCOME

| | | |
|----------------------------|-------|--------------|
| Interest income | \$ 11 | |
| TOTAL NON OPERATING INCOME | | <u>\$ 11</u> |

TOTAL INCOME

\$ 235,197

EXPENSES

| | | |
|----------------|------------|-------------------|
| O & M | \$ 154,729 | |
| Taxes | | |
| TOTAL EXPENSES | | <u>\$ 154,729</u> |

INCOME AVAILABLE FOR D/S (A)

\$ 80,468

DEBT SERVICE

| | | |
|-------------------------|-----------|------------------|
| Existing Bond P & I (B) | \$ 23,916 | |
| Proposed Bond P & I (B) | \$ 32,892 | |
| Proposed Bond P & I (B) | \$ 11,472 | |
| TOTAL DEBT SERVICE | | <u>\$ 68,280</u> |

DEBT SERVICE RESERVE

| | | |
|-----------------------|----------|--|
| Debt Service Reserve* | \$ 6,828 | |
|-----------------------|----------|--|

TOTAL DEBT SERVICE RESERVE

\$ 6,828

SURPLUS (DEFICIT)

\$ 5,360

DEBT COVERAGE (A/B)

\$ 1.18

Based on RUS loan of \$236,000 @3.625% for 38 years.

LOAN RESOLUTION
(Public Bodies)

A RESOLUTION OF THE _____ **Board of Directors**

OF THE _____ **Birch River Public Service District**

AUTHORIZING 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

TWO HUNDRED THIRTY-SIX THOUSAND AND XX / 100 DOLLARS (\$236,000.00)

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.

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

3 members, of whom 3 constituting a quorum, were present at a meeting thereof duly called and

held on the 12th day of December, 2008 ; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of December 22, 2014, 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 22nd day of December, 2014

T.G. Griffith

T.G. Griffith

Title Secretary



SPECIMEN

UNITED STATES OF AMERICA
BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2014 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$236,000

No. AR-1

Date: December 22, 2014

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 TWO HUNDRED THIRTY-SIX THOUSAND DOLLARS (\$236,000), plus interest on the unpaid principal balance at the rate of 3.25% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing January 22, 2015 (30 days following delivery of the Bond) and continuing on the 22nd day of each month to and including December 22, 2016 (24 months after the date hereof), and thereafter monthly installments covering principal and interest of \$904 beginning January 22, 2017, to and including December 22, 2054 (40 years from the date of this Bond), provided, that the final installment shall be paid 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 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 December 18, 2014, 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:

(I) WATER REVENUE BOND, 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"); AND

(II) WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 19, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$630,000 (THE "SERIES 2009 A BONDS"), (COLLECTIVELY, THE "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.

[Remainder of Page Intentionally Blank]

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

[CORPORATE SEAL]

Chairman, Public Service Board
P.O. Box 218
Birch River, West Virginia 26610

ATTEST:

Secretary, Public Service Board

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|------------------|-------------|---------------|-------------|
| (1) \$179,840.61 | 12/22/2014 | (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:

December 22, 2014

Birch River Public Service District
Water Revenue Bonds, Series 2014 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 \$236,000 Water Revenue Bonds, Series 2014 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 December 18, 2014 (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.

The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions, additions and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) paying certain issuance and other costs in connection therewith.

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: (i) Water Revenue Bond, 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"); and (ii) Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), dated October 19, 2009, issued in the original aggregate principal amount of \$630,000 (the "Series 2009 A Bonds"), (collectively, the "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,



STEPTOE & JOHNSON PLLC