

DISTRIBUTION LIST

\$1,280,000

BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

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Lender

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Issuer

Branchland/Midkiff Public Service District  
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Doris McCoy, Secretary  
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Project Coordinator

Dave Michael  
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Registrar

Charlotte Morgan, Assistant Vice President  
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## TRANSCRIPT LIST

\$1,280,000  
Branchland/Midkiff Public Service District  
Water Revenue Bonds,  
Series 1998  
(West Virginia Infrastructure Fund)

Closing: July 29, 1998

### A. BASIC

1. Grant Agreement.
2. County Commission Orders on Creation of Branchland/Midkiff Public Service District (the "Issuer").
3. County Commission Orders on Appointment of Board Members.
4. Oaths of Office of Board Members.
5. Issuer's Rules of Procedure.
6. Bond Resolution of the Issuer adopted on July 22, 1998.
7. Rate Resolution of the Issuer adopted on July 22, 1998.
8. Notice of Meeting on Bond Resolution and Affidavit of Publication.
9. Minutes of Meeting of Board with respect to Resolutions.
10. Loan Agreement between West Virginia Water Development Authority, acting on behalf of West Virginia Infrastructure and Jobs Development Council, and the Issuer.

### B. CERTIFICATES AND RECEIPTS

11. General Certificate signed by the Chairman, Secretary and Attorney of the Issuer.
12. Certificate of Consulting Engineer.
13. Certificate of Certified Public Accountant.
14. Certificate of Secretary as to Truth and Accuracy of Documents Delivered.
15. Registrar's Agreement between the Issuer and Registrar.
16. Acceptance of Duties of Depository Bank.

17. Acceptance of Duties of Registrar.
18. Request and Authorization as to Authentication and Delivery of Bond.
19. Certificate of Registration of Bond.
20. Cross-Receipt for Bond and Bond Proceeds.
21. Notice of Delivery of Bond.
22. Bond Registry Form.
23. Rural Utilities Service's Consent to Issuance of Parity Bond and Waiver of Debt Service Coverage Requirement.
24. Resolution Authorizing Appointment of Acting Chairman.

#### C. LEGAL OPINIONS

25. Bond Counsel Opinion of Goodwin & Goodwin, LLP.
26. Issuer's Counsel Opinion of Hanna & Bonham.
27. Title Opinion of Hanna & Bonham.

#### D. MISCELLANEOUS

28. Municipal Bond Commission New Issue Report Form. ★
29. West Virginia Public Service Commission Recommended Decision and Commission Order Reopening Proceeding and Granting Petition.
30. West Virginia Infrastructure and Jobs Development Council Commitment Letter.
31. Specimen Bond. ★
32. 1966 Bond Resolution.
33. Copy of Statutory Authority.

The closing of the sale of \$1,280,000 in aggregate principal amount of Branchland/Midkiff Public Service District, Water Revenue Bond, Series 1998 (West Virginia Infrastructure Fund), will take place at the office of the West Virginia Water Development Authority, 180 Association Drive,

Charleston, West Virginia, at 10:00 a.m., Eastern Time, on July 29, 1998. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document which references an Exhibit or Schedule to be attached thereto shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.

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(August 1996)

## GRANT AGREEMENT

This Grant Agreement entered into between the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the Branchland-Midkiff Public Service District (the "Governmental Agency").

### RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$1,280,000 (the "Grant") for the purpose of the acquisition and construction/design/planning of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purpose of constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Agreement sets forth the Council, the Authority and the Governmental Agency's understanding and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Authority and the Governmental Agency hereby agree as follows:

### TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.
2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority and the Council.
3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.
4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.
5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

6. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

7. The Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant available due to bid/construction/project underruns.

8. This Agreement shall be governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by the respective duly authorized officers as of the date executed below by the Authority.

BRANCLAND-MIDKIFF PUBLIC SERVICE  
DISTRICT

By: [Signature]  
Its: Acting Chairman

Date: July 29, 1998

SEAL

ATTEST

[Signature]  
Its: Secretary

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By: [Signature]  
Director

Date: 7/29/98

SEAL

ATTEST

[Signature]  
Secretary - Treasurer

## EXHIBIT A

The project consists of the construction of one 122,000 gallon water storage tank, one booster pump station, waterline consisting of approximately 6,800 L.F. of 8", 76,620 L.F. of 6", 13,825 L.F. of 2", and other necessary appurtenances. The total cost of the project is \$2,560,000.



A Resolution and order fixing a date of hearing on the cessation of a proposed public service district within Lincoln County, West Virginia; and providing for the publication of a notice of such hearing.

### ### ###

WHEREAS, there has heretofore been filed in the office of the Clerk of the County Court of Lincoln County, West Virginia, a petition to this County Court, for the Creation of a public service district within Lincoln County, West Virginia; and

WHEREAS, said County Court Clerk has presented such petition to this County Court at this meeting; and

WHEREAS, pursuant to the provisions of Article 13-a of Chapter 16 of the West Virginia Code, this County Court upon presentation of such petition is required to fix a date of hearing on the creation of the proposed public service district:

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

Section 1. That the County Court of Lincoln County, West Virginia, hereby finds and declares that there has been filed in the office of the County Court Clerk and presented by said County Court Clerk to this County Court, a petition for the creation of a public service district within Lincoln County, West Virginia, which Petition contains a description sufficient to identify the territory to be embraced within the proposed public service district and the name of the proposed Public service district and which Petition has been signed by at least one hundred legal voters resident within and owning real property within the limits of the proposed public service district, and said County Court further finds and declares that said petition in all respects meets the requirements of Article 13-a of Chapter 16 of the West Virginia Code.

SECTION 2. That said Petition, among other things, states as follows:

- (a) The name and corporate title of said public service district shall be the "Branchland-Midkiff Public Service District".
- (b) The territory to be embraced in said public service district shall be as follows: an area comprised of communities of Branchland, Hubball, and Midkiff, being specifically described as follows:

BEGINNING at a point in Guyandot River opposite the Mouth of Peyton Branch and the boundary of Pleasant View Public Service District, down Guyandot River to a point having a latitude of North 38° 14' 49" and longitude West 82° 11' 10".

THENCE South 0.4 Miles to a point having a latitude of North 38° 14' 24" and longitude of West 82° 11' 10",

THENCE Southwesterly direction 0.7 miles to a point having a latitude of North 38° 14' 03" and longitude of West 82° 11' 45"

THENCE Southerly 0.8 miles to a point having a latitude of North 38° 13' 19",  
THENCE Southeasterly 1.0 Miles to a point having a latitude of North 38° 12' 47" and longitude of West 82° 10' 53",

THENCE SOUTH 1.2 miles to a point having a latitude of North 38° 11' 45" and longitude of West 82° 10' 56"

THENCE Southeasterly 1.3 miles to a point having a latitude of North 38° 10' 46" and longitude of West 82° 10' 12"

THENCE Southeasterly 0.5 Miles to a point having a latitude of North 38° 10' 23" and longitude West 82° 09' 45",

THENCE Southwesterly 1.2 miles to a point having a latitude of North 38° 09' 32" and longitude of West 82° 10' 00",

THENCE Crossing Guyandott River west 0.3 miles to a point having a latitude of North 38° 09' 32" and a longitude of West 82° 10' 52",





AT A REGULAR SESSION OF THE COUNTY COMMISSION OF LINCOLN COUNTY, WEST VIRGINIA, HELD AT THE COURTHOUSE THEREOF, ON THE 3rd DAY OF December 19 92, THE FOLLOWING ORDER WAS MADE AND ENTERED.

SUBJECT: BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT

THE FOLLOWING MOTION WAS OFFERED BY PAUL DUNCAN  
TO RE-APPOINT HAROLD R. SMITH AND CONRAD LUCAS TO THE BRANCHLAND- MIDKIFF  
PUBLIC SERVICE DISTRICT AS REQUESTED BY THE BRANCHLAND-MIDKIFF PSD

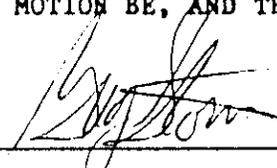
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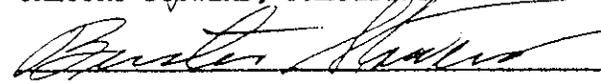
THE ADOPTION OF THE FOREGOING MOTION HAVING BEEN MOVED  
BY PAUL DUNCAN, COMMISSIONER, AND DULY SECONDED

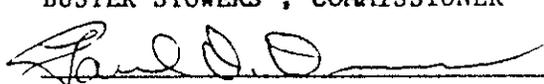
BY GREG STOWERS, COMMISSIONER, THE VOTE THEREON WAS AS FOLLOWS:

GREGORY STOWERS	PRESIDENT	<u>AYE</u>
BUSTER STOWERS	COMMISSIONER	<u>AYE</u>
PAUL DUNCAN	COMMISSIONER	<u>AYE</u>

WHEREUPON, GREGORY STOWERS, PRESIDENT DECLARED SAID MOTION DULY ADOPTED, AND IT IS THEREFORE ADJUDGED AND ORDERED THAT SAID MOTION BE, AND THE SAME IS HEREBY ADOPTED.

  
\_\_\_\_\_  
GREGORY STOWERS, PRESIDENT

  
\_\_\_\_\_  
BUSTER STOWERS, COMMISSIONER

  
\_\_\_\_\_  
PAUL DUNCAN, COMMISSIONER

AT A REGULAR SESSION OF THE COUNTY COMMISSION OF LINCOLN COUNTY WEST VIRGINIA, HELD AT THE COURTHOUSE THEREOF, ON THE 16TH DAY OF JANUARY, 1997 THE FOLLOWING ORDER WAS MADE AND ENTERED.

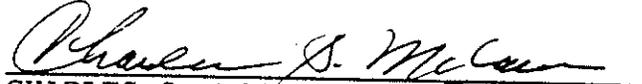
SUBJECT: BRANCLAND-MIDKIFF PUBLIC SERVICE DISTRICT

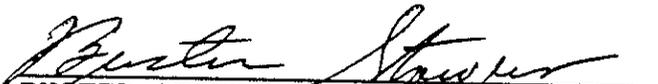
THE FOLLOWING MOTION WAS OFFERED BY DOUG WALDRON COMMISSIONER TO APPOINT RONALD D. LUCAS AS COMMISSIONER FOR THE BRANCLAND-MIDKIFF PUBLIC SERVICE DISTRICT AS REQUESTED BY THE BRANCLAND-MIDKIFF PUBLIC SERVICE DISTRICT. TERM BEING JANUARY 1, 1997 - DECEMBER 31, 1999.

THE ADOPTION OF THE FOREGOING MOTION HAVING BEEN MOVED BY DOUG WALDRON, COMMISSIONER, AND DULY SECONDED BY BUSTER STOWERS, COMMISSIONER, THE VOTE THEREON WAS AS FOLLOWS:

CHARLES S. MCCANN	PRESIDENT	AYE
BUSTER STOWERS	COMMISSIONER	AYE
DOUG WALDRON	COMMISSIONER	AYE

WHEREUPON, CHARLES S. MCCANN, PRESIDENT DECLARED SAID MOTION DULY ADOPTED, AND IT IS THEREFORE ADJUDGED AND ORDERED THAT SAID MOTION BE, AND THE SAME IS HEREBY ADOPTED.

  
CHARLES S. MCCANN, COMMISSIONER

  
BUSTER STOWERS, COMMISSIONER

  
DOUGLAS WALDRON, COMMISSIONER

AT A REGULAR SESSION OF THE COUNTY COMMISSION OF LINCOLN COUNTY,  
WEST VIRGINIA, HELD AT THE COURTHOUSE THEREOF, ON THE 7TH DAY OF  
DECEMBER, 1995 THE FOLLOWING ORDER WAS MADE AND ENTERED.

SUBJECT: BRANCLAND-MIDKIFF PSD

THE FOLLOWING MOTION WAS OFFERED BY DOUG WALDRON COMMISSIONER  
TO APPROVE THE APPOINTMENT OF ALFRED ABSHIRE, JR AS COMMISSIONER OF  
THE BOARD OF DIRECTORS FOR THE BRANCLAND-MIDKIFF PUBLIC SERVICE  
DISTRICT. TERM BEING 12-8-95 - 12-31-99.

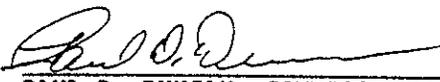
THE ADOPTION OF THE FOREGOING MOTION HAVING BEEN MOVED

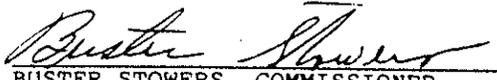
BY DOUG WALDRON, COMMISSIONER, AND DULY SECONDED

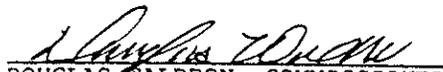
BY PAUL DUNCAN, COMMISSIONER, THE VOTE THEREON WAS AS FOLLOWS:

PAUL D. DUNCAN	PRESIDENT	AYE
BUSTER STOWERS	COMMISSIONER	AYE
DOUG WALDRON	COMMISSIONER	AYE

WHEREUPON, PAUL D. DUNCAN, PRESIDENT DECLARED SAID MOTION DULY  
ADOPTED, AND IT IS THEREFORE ADJUDGED AND ORDERED THAT SAID MOTION BE,  
AND THE SAME IS HEREBY ADOPTED.

  
\_\_\_\_\_  
PAUL D. DUNCAN, COMMISSIONER

  
\_\_\_\_\_  
BUSTER STOWERS, COMMISSIONER

  
\_\_\_\_\_  
DOUGLAS WALDRON, COMMISSIONER



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OATH OF OFFICE

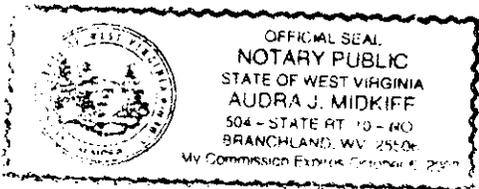
STATE OF WEST VIRGINIA  
COUNTY OF LINCOLN, TO WIT:

I, Alfred Abshire, Jr., do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Commissioner of Branchland-Midkiff Public Service District for Lincoln County, West Virginia to the best of my skill and judgment, So Help Me God.

*Alfred Abshire, Jr.*  
Affiant

Taken, subscribed and sworn to before the undersigned authority this the 8 day of Jan., 1996.

My commission expires October 6, 2003.



*Audra J. Midkiff*  
Notary Public or Clerk

OATH OF OFFICE

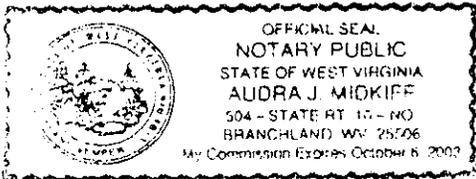
STATE OF WEST VIRGINIA  
COUNTY OF LINCOLN, TO WIT:

I, Harold R. Smith, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Chairman of Branchland-Midkiff Public Service District for Lincoln County, West Virginia to the best of my skill and judgment, So Help Me God.

Harold R. Smith  
Affiant

Taken, subscribed and sworn to before the undersigned authority this the 6 day of January, 1993.

My commission expires October 6, 2003.



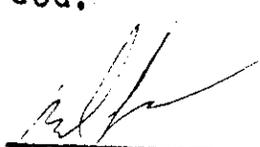
Audra J. Midkiff  
Notary Public

COPY  
DMPSP  
I

OATH OF OFFICE

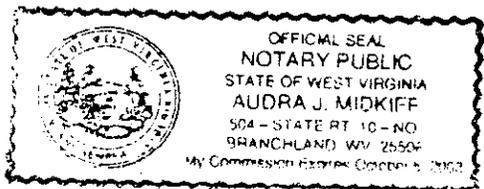
STATE OF WEST VIRGINIA  
COUNTY OF LINCOLN, TO WIT:

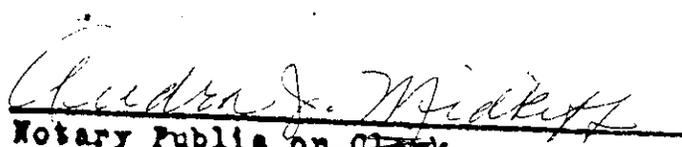
I, Ronald D. Lucas, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Treasurer of Branchland-Midkiff Public Service District for Lincoln County, West Virginia to the best of my skill and judgment, So Help Me God.

  
\_\_\_\_\_  
Affiant

Taken, subscribed and sworn to before the undersigned authority this the 3<sup>rd</sup> day of February 1997.

My commission expires October 6, 2003.



  
\_\_\_\_\_  
Notary Public or Clerk



## RULES OF PROCEDURE

### BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT

#### ARTICLE I

##### NAME AND PLACE OF BUSINESS

Section 1. Name: Branchland/Midkiff Public Service District (the "District")

Section 2. The principal office of the District will be located at Rt. 2, Box 496, Branchland, Lincoln County, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Branchland/Midkiff Public Service District, and in the center "seal" as follows:

Section 4. The fiscal year of the District shall begin the 1st day of July in each year and shall end on the following June 30.

#### ARTICLE II

##### PURPOSE

The District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act").

#### ARTICLE III

##### MEMBERSHIP

Section 1. The members of the Public Service Board (the "Board") of the District shall be those persons appointed by The County Commission of Lincoln County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

## ARTICLE IV

### MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Board of the District shall hold regular monthly meetings on the first Monday of each month at 6:30 p.m. at the District's office or at such day, hour and location as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following Monday at the same time. Special meetings of the Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Board of the District, 2 members shall constitute a quorum. Each member of the Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members by letter or telephone shall be required for special meetings. Unless otherwise waived, notice in writing of each special meeting of the membership shall be given to all members by the Secretary by mailing the same to the last known post office addresses of the members at least 2 days before the date fixed for such meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

Section 4. At the regular meetings of the Board, the following shall be the order of business:

1. Roll call.
2. Reading and approval of the Minutes of the previous meeting.
3. Bills and communications.
4. Reports of the Secretary and Treasurer.
5. Reports of committees.
6. Unfinished business.
7. Adjournment.

Section 5. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended, notice of the time and place of all regularly scheduled meetings of the Board, and the time, place and purpose of all special meetings of the Board, shall be made available, in advance, to the public as follows:

A. A notice shall be posted by the Secretary of the Board at the front door of the place fixed for the regular meetings of the Board of the time and place fixed and entered of record by the Board for the holding of regularly scheduled meetings and may be posted at the front door of the Lincoln County Courthouse. If a particular

regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the front doors of the meeting place and at any other posted location as soon as feasible after such cancellation or postponement has occurred.

B. A notice shall be posted by the Secretary of the Board at the front door of the place fixed for any special meetings of the Board, at least 48 hours before a special meeting is to be held, stating the time, place and purpose for which such special meeting shall be held and may be posted at the front door of the Lincoln County Courthouse. If the special meeting is cancelled, a notice of such cancellation shall be posted at the front doors of the meeting place and at any other posted location as soon as feasible after such cancellation has occurred.

C. The form of notice for posting as to a special meeting may be generally as follows:

BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL MEETING

The Public Service Board of Branchland/Midkiff Public Service District will meet in special session on \_\_\_\_\_, 199\_, at \_\_\_\_\_.m., prevailing time, at \_\_\_\_\_, Branchland, West Virginia, for the following purposes:

1. To consider and act upon a proposed Bond Resolution providing for the issuance of a Water Revenue Bond, Series \_\_\_\_\_, of the District, in the principal amount of \$\_\_\_\_\_ to provide funds for construction of water extension facilities of the District.

2. To authorize the Chairman and Secretary of the Board to sign such documents as may be required to accomplish the purposes set forth above.

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 19\_\_

D. Notice to any news media which requests such notices or regularly attends such meetings may be given by mailing or telecopying a copy of such notice to the address or fax number furnished in writing to the District by such news media.

## ARTICLE V

### OFFICERS

Section 1. The officers of the Board shall be a Chairman, Secretary and Treasurer. The Chairman shall be elected from the members of the Board. The Secretary and Treasurer need not be members of the Board and may be the same person.

Section 2. The officers of the Board shall be elected each year by the members at the first meeting held in the month of January of such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected as hereinabove provided.

## ARTICLE VI

### DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Board. He shall, together with the Secretary, sign the minutes of all meetings at which he shall preside. He shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him by the Board, by these Rules of Procedure, or prescribed by law. He shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the Chairman is absent from any meeting, the remaining members of the Board shall select a temporary chairman.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. He shall, together with the Chairman, sign the minutes of the meetings at which he is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other writings and papers of the Board. He shall also perform such other duties as he may have under law by virtue of his office or as may be conferred upon him from time to time by the members of the Board.

Section 4. All resolutions shall be in writing and shall be copied in minutes of the meetings of the Board, and the voting on all questions coming before the Board shall be by roll call, and the Ayes and Nays shall be entered upon the minutes of such meeting.

Section 5. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be

kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board.

## ARTICLE VII

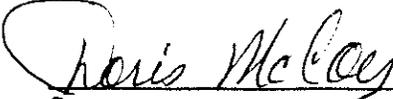
### AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present voting for the amendment; but no such change, alteration, amendment or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment or addition and a clear statement of the substance thereof has been included in the written notice calling such meeting.

CERTIFICATION

I, Doris McCoy, Secretary of the Public Service Board of the Branchland/ Midkiff Public Service District, hereby certify that the foregoing is a true and correct copy of the Rules of Procedure of said Public Service Board including all amendments thereto. I further certify that such Rules of Procedure remain in full force and effect and have not been amended further or repealed.

WITNESS my signature on this 29th day of July, 1998.

  
Secretary

RESOLUTION OF THE BOARD OF THE BRANCLAND/MIDKIFF  
PUBLIC SERVICE DISTRICT ADOPTING RULES OF PROCEDURE

WHEREAS, the Branchland/Midkiff Public Service District (the "District") desires to adopt a set of Rules of Procedure to govern its operations as required by the provisions of Chapter 16, Article 13A, Section 4 of the Code of West Virginia of 1931, as amended; and

WHEREAS, there has been presented to the members of the Public Service Board a proposed set of Rules of Procedure for their review and consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE DISTRICT AS FOLLOWS:

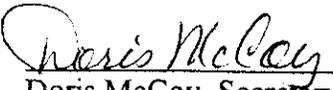
RESOLVED, that the Rules of Procedure presented for consideration are hereby approved and adopted as the Rules of Procedure of the District.

Adopted by the Public Service Board of the District at a special meeting duly called and held on the 22nd day of July 1998.

  
\_\_\_\_\_  
Ronald D. Lucas, Acting Chairman

[SEAL]

ATTEST:

  
\_\_\_\_\_  
Doris McCoy, Secretary



BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

BOND RESOLUTION

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BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE CONSTRUCTION OF NEW PUBLIC WATER FACILITIES OF BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COSTS THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF \$1,280,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1998 (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ADOPTED BY THE PUBLIC SERVICE BOARD OF THE BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT:

ARTICLE I

DEFINITIONS, STATUTORY AUTHORITY AND FINDINGS

Section 1.01. Definitions. The following terms shall have the following meanings in this Resolution unless the context expressly requires otherwise.

"Act" means, collectively, Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of adoption of this Resolution.

"Administrative Fee" means any administrative fee required to be paid under the Loan Agreement.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the Council under the Act.

"Authorized Officer" means the Chairman or Acting Chairman of the Governing Body of the Issuer or any other officer or person of the Issuer specifically designated by resolution of the Governing Body of the Issuer.

"Board" or "Public Service Board" means the public service board of the Issuer or any successor thereto.

"Bond" means the not more than \$1,280,000 aggregate principal amount of Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), originally authorized hereby.

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

"Bonds Sinking Fund" means the Bonds Sinking Fund established by Section 4.02 hereof.

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

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

"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.

"Construction Fund" means the Construction Fund established by Section 4.01 hereof.

"Consulting Engineers" means Haworth, Meyer & Boleyn, Inc., South Charleston, West Virginia, or any qualified engineer or firm of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof; provided however, that the Consulting Engineer shall not be a regular, full-time employee of the State or any of its agencies, commissions or political subdivisions.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

"Depository Bank" means the bank designated as such herein or in any Supplemental Resolution, and its successors and assigns.

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

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

"Governmental Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Grant" means the \$1,280,000 grant to be made to the Issuer by the Council and to be used to pay a portion of the cost of the Project.

"Grant Agreement" means the contract between the Council and the Issuer governing the terms of the Grant.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" shall not include any proceeds from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined).

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

"Issuer" means Branchland/Midkiff Public Service District, a public service district and political subdivision of the State of West Virginia, in Lincoln County, West Virginia, and, unless the context clearly indicates otherwise, includes the Board and any successor thereto.

"Loan Agreement" means the Loan Agreement heretofore entered into, or to be entered into, between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Bonds from the Issuer by the Authority, the form of which is hereby approved, and the execution and delivery by the Issuer authorized and directed or ratified herein.

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

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest, if any, on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital

assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being delivered except (a) any Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Resolution and set aside for such payment (whether upon or prior to maturity); and (b) any Bond deemed to have been paid as provided in Article VI hereof.

"Paying Agent" means the Commission designated as such herein or in any supplemental Resolution, and its successors and assigns.

"Project" means the Project described in Section 1.03A hereof.

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

(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, Bonds 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, Bond, 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 or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

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

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

"Registrar" means the bank or other entity to be designated as such herein or in a Supplemental Resolution and its successors and assigns.

"Secretary" means the Secretary of the Issuer.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution of the Issuer amending or supplementing this Resolution.

"Surplus Revenues" means the Net Revenues, if any, not required by any Prior Bonds or any prior bond resolution to be set aside and held for the payment of or security for any outstanding bonds or notes of the Issuer, including any reserve or depreciation accounts.

"System" means the Project initially, and all existing water facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter acquired and/or owned, held or used in connection with the System, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a public water system; and shall also include any and all additions,

extensions, improvements, replacements, properties or other facilities at any time acquired or constructed for said water system after completion of the Project.

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

"West Virginia Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

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

Words importing singular number include the plural number in each case and vice versa, words importing the masculine gender include every other gender, and words importing persons include firms, partnerships, associations and corporations.

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

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

Section 1.02. Authority for this Resolution. This Resolution, together with any resolution supplemental hereto or amendatory hereof, is adopted pursuant to the provisions of the Act and other applicable provisions of the law.

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

A. The Issuer now operates the System and desires to improve and expand the System. 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, betterments and improvements to the existing System of the Issuer so as to improve the public health, comfort and convenience of residents of the Issuer, including the construction and installation of all necessary appurtenant facilities (the "Project"), and generally described as water line extensions, pumps, pumping stations, water plant improvements and necessary appurtenances particularly described in and according to the plans and specifications prepared by the Consulting Engineer for the Project and heretofore filed in the office of the Issuer and to pay the costs of issuance of revenue bonds to be issued to finance a portion of the cost of such improvements. The construction and acquisition 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.

B. It is deemed necessary for the Issuer to issue its Bond, in an aggregate principal amount of \$1,280,000, to finance a portion of the costs of the acquisition and construction of the Project and the costs of issuance of the Bonds and related costs, and which, with the Grant, will pay the costs of the Project.

C. It is in the best interests of the Issuer that its Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement.

D. There are no other outstanding obligations of the Issuer which will rank on a parity with the Bonds as to pledge on and source of and security for payment except for the Issuer's \$180,000 Water-Works System Revenue Bond, Series A (1966) (the "Prior Bonds"). There are no other outstanding bonds or other obligations of the Issuer which will rank senior and prior to or on a parity with the Bonds as to lien, pledge and source of and security for payment. The Bonds shall be payable only from and secured by a first lien, on a parity with the Prior Bonds, on the Net Revenues from the System. The Issuer has no other obligations outstanding, other than the Prior Bonds, which are payable from any source from which the Bonds are payable. The parity tests required by the resolution adopted on August 31, 1966 (the "Prior Resolution") have been met or waived.

E. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to the authorization of the acquisition and construction of the Project and the issuance of the Bonds, or will have so complied prior to issuance of the Bonds, including the obtaining of approval of the acquisition and construction of the Project and the issuance of the Bonds from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired, including the issuance of the Commission Order Reopening Proceeding and Granting Petition specifically authorizing the issuance of the Bonds.

F. Pursuant to the Act, the Project has been reviewed and determined to be technically and financially feasible by the Council, and the Council has authorized the Authority to make a loan to the Issuer from the West Virginia Infrastructure Fund (or will have so authorized prior to issuance of the Bonds).

Section 1.04. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owners of the Bonds.

## ARTICLE II

### AUTHORIZATION OF THE ACQUISITION AND CONSTRUCTION OF THE PROJECT AND ENTRY INTO THE LOAN AGREEMENT

Section 2.01. Authorization of the Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of \$2,560,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers and filed in the office of the Board. The proceeds of the Bonds are hereby authorized and shall be applied as provided in Article IV hereof. The Issuer has or will enter into contracts for the acquisition and construction of the Project compatible with the finance plan in the Application.

Section 2.02. Authorization for Issuer to Enter Into Loan Agreement. The Issuer hereby approves the Loan Agreement and the sale of the Bonds pursuant to the Loan Agreement. The Chairman or Acting Chairman is hereby authorized and directed to execute and deliver the Loan Agreement to the Authority.

Section 2.03. Designation of Parties. The Issuer hereby designates The Twentieth Street Bank, West Hamlin, West Virginia, to serve as the Depository Bank and One Valley Bank, National Association, Charleston, West Virginia, to serve as the Registrar for the Bonds. The Commission is hereby designated as Paying Agent for the Bonds.

## ARTICLE III

### THE BONDS

Section 3.01. Authorization of the Bonds. For the purposes of financing a portion of the costs of acquiring and constructing of the Project and paying the costs of issuance of the Bonds and related costs, there shall be and hereby are authorized to be issued the Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), of the Issuer, in an aggregate principal amount of \$1,280,000.

Section 3.02. Terms of Bonds. The Bonds shall be issued in fully registered form and shall be initially issued as one Bond, numbered R-1, in the principal amount of \$1,280,000. The Bonds shall be dated June 29, 1998, shall bear interest at zero percent (0%), shall mature on June 1, 2038, in such amount, shall be payable quarterly, each March 1, June 1, September 1 and December 1, commencing December 1, 1999, and shall be subject to such repayment or redemption, all as provided herein or in any Supplemental Resolution or the Bond.

The aggregate principal amount of the Bonds need not be paid to the Issuer upon delivery of the Bonds but may be advanced to the Issuer as requested by the Issuer from time to time; and the Bonds shall evidence only the indebtedness recorded on the Record

of Advances attached thereto and incorporated therein. Interest shall accrue on the Bonds only on the amount of each advance from the actual date thereof as listed on said Record of Advances.

The Bonds shall be payable as to principal and interest at the principal office of the Paying Agent in any coin or currency which, on the dates of payment, is legal tender for the payment of public and private debts under the laws of the United States of America.

Section 3.03. Execution and Authentication of Bonds. The Bonds shall be executed in the name of the Issuer by the manual signature of its Chairman and the seal of the Issuer shall be affixed thereto, and attested by the manual signature of the Secretary of the Issuer. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed shall have been actually sold or delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office of the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

No Bond shall be valid or entitled to any security or benefit under this Resolution unless and until the certificate of authentication and registration on such Bond shall have been duly manually executed by the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bonds Legislation. The certificate of authentication and registration shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication and registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Bonds shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that said Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. The Bonds shall be transferrable only upon the books of the Registrar which shall be kept for that purpose at the office of the Registrar by request of the registered owner thereof in person or by his attorney duly authorized in writing, and upon surrender thereof, together with a written

instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of a Bond, there shall be issued to the transferee another fully registered Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond.

In all cases in which the privilege of transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such transfers shall forthwith be canceled by the Registrar. For every such transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each new Bond upon each transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer (except for the Authority) as a condition precedent to the exercise of the privilege of making such transfer. The Registrar shall not be obliged to make any such transfer of Bonds during the 15 days preceding an interest payment date on the Bonds or after notice of any prepayment of the Bonds has been given.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer, may in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bonds or in lieu of and substitution for the Bond destroyed, stolen or lost and upon the Holder's furnishing the Issuer proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Council may prescribe and paying such expenses as the Issuer may incur. All Bonds so surrendered shall be submitted to and canceled by the Registrar and held for the account of the Issuer. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.06. Form of Bond. The text of the Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution or any Supplemental Resolution adopted prior to the issuance thereof:

(Form of Bond)  
UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. R-1

\$1,280,000.00

Date: July 29, 1998

KNOW ALL MEN BY THESE PRESENTS: That BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Lincoln County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner provided therefor, as hereinafter set forth, to the order of the West Virginia Water Development Authority (the "Authority") or registered assigns, the principal sum of One Million Two Hundred Eighty Thousand and 00/100 Dollars (\$1,280,000.00 U.S. ), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the Record of Advances attached hereto and incorporated herein by reference as a part hereof, without interest on the unpaid principal balance.

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal shall be repaid in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 1999, as set forth on the "Debt Service Schedule" attached as Exhibit A hereto and incorporated herein by reference.

Principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia (the "Registrar"), on the 15th day of the month next preceding such payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated July 29, 1998, by and between the Issuer and the Authority, on behalf of the Council.

This Bond is issued (i) to finance a portion of the costs of the acquisition and construction of water service extensions of the Issuer (the "Project", and together with any existing water facilities of the Issuer and any further additions, betterments and improvements thereto, collectively referred to as the "System") and (ii) to pay the costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and

statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on July 22, 1998 (the "Bond Legislation"), and is subject to all the terms and conditions thereof.

The principal of this Bond is payable only from and secured by a first lien on Net Revenues (as defined in the Bond Legislation) of the System, on a parity with the Issuer's \$180,000 Water-Works System Revenue Bond, Series A (1966) (the "Prior Bonds"), moneys in the Series 1998 Bonds Reserve Account and unexpended proceeds of this Bond. All moneys from the operation of the System shall be deposited into the Revenue Fund established or continued under the Bond Legislation for the prompt payment of the principal of this Bond on a parity with the Prior Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside in a special fund hereby pledged for such purpose. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on this Bond, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with this Bond, as well as the Prior Bonds; provided however, that so long as the Series 1998 Bonds Reserve Account is funded in an amount at least equal to the maximum amount of principal and interest which will come due on this Bond in the then current or any succeeding year, and the reserve account for any other obligations outstanding prior to or on a parity with this Bond, including the Prior Bonds, is funded in an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of this Bond for the terms of which reference is made to the Resolution. Remedies provided the Registered Owners of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Issuer be obligated to pay the same except from the sources set forth above. Under the Bond Legislation, the Issuer has entered into certain covenants with the Authority, for the terms of which reference is made to the Bond Legislation. Remedies provided the Authority are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth herein, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the West Virginia. This Bond is transferable, as provided in the Bond Legislation, only by transfer of registration upon the books of the Registrar, to be made at the request of the registered owner hereof in person or by his attorney duly authorized in writing, and upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney.

All moneys received from the sale of this Bond shall be applied solely to the payment of the costs of acquisition and construction of the Project and the costs of issuance and related costs described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

On August 1, 1999, if the amount set forth on the Record of Advances is less than \$1,280,000, the Authority shall upon written instruction of the Council revise Exhibit B to reflect the lesser amount but amortized at the same interest rate and quarterly payment amount.

Under the Act, this Bond is exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the Bonds, together with all other obligations of the Issuer, do not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S \$180,000 WATER-WORKS SYSTEM REVENUE BOND, SERIES A (1966).

The loan will be in default should any proceeds of the loan funds obtained from this parity bond issue 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.

This Bond shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

IN WITNESS WHEREOF, BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Acting Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated July 29, 1998.

BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT

[SEAL]

By: \_\_\_\_\_  
Acting Chairman

Attest:

By: \_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is to certify that this Bond is one of the Bonds described in and issued under the provisions of the within-mentioned Bond Legislation and has been duly registered in the name of the registered owned set forth above.

Date: July 29, 1998.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By: \_\_\_\_\_  
Authorized Officer

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_ the within-mentioned Bond and does hereby irrevocably  
constitute and appoint \_\_\_\_\_, attorney, to transfer said Bond on the books of  
the Registrar on behalf of said Issuer with full power of substitution in the premises.

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

\_\_\_\_\_

IN THE PRESENCE OF :

\_\_\_\_\_

**RECORD OF ADVANCES**

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

**TOTAL** \$ \_\_\_\_\_

West Virginia Infrastructure and Jobs Development Council  
Branchland/Midkiff Public Service District  
Debt Service Schedule  
Closing: July 29, 1998  
Total Amount Borrowed: \$1,280,000

<u>Date</u>	<u>Coupon</u>	<u>Principal</u>	<u>Quarterly Debt Service</u>	<u>Annual Debt Service</u>
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Section 3.07. Sale of Bonds: Ratification and Execution of Loan Agreement with Authority. The Bonds shall be sold to the Authority pursuant to the terms and conditions of the Loan Agreement contemporaneously with, or as soon as practicable and authorized and permitted by applicable law after, adoption of this Resolution; provided, that the Authority and the Issuer shall have agreed to the purchase thereof. The Chairman or Acting Chairman is specifically authorized and directed to execute the Loan Agreement, and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized ratified and approved.

Section 3.08. Advances of Principal of Bonds; Excess Bond Proceeds. The Issuer shall requisition the Council for the proceeds of the Bonds as needed to pay the costs of acquisition and construction of the Project and the costs of issuance of the Bonds and related costs, and such proceeds shall be paid to the Issuer or its designated payee only to pay the costs authorized by this Bond Legislation. Upon completion of the Project, any Bond Proceeds not required for the Project Costs shall be applied as directed by the Council.

Section 3.09. Pledge of Security for the Bonds. The principal of and interest on the Bonds shall be payable only from and secured by a first lien, on a parity with the Prior Bonds, on Net Revenues all of which are hereby pledged for such payment.

Section 3.10. Bonds Not to be Indebtedness of Issuer. The Bonds shall be special obligations of the Issuer, payable solely from the sources described above. The Bonds do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer, if any, is pledged for the payment of the Bonds. The Holders of the Bonds shall never have the right to compel the forfeiture of any property of the Issuer. The Bonds shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as pledged therefor by this Resolution.

Section 3.11. Prohibition of Other Loans. So long as the Bonds and the Prior Bonds are outstanding, no bonds or other evidences of indebtedness against the System shall be issued by the Issuer without the prior written consent of the Authority and the Council and the holder of the Prior Bonds; provided however, that the Issuer may issue refunding bonds to pay the entire outstanding principal of and interest accrued on the Bonds in full. The Issuer shall give the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants, or any other obligations related to the Project or the System.

Section 3.12. Covenants with Holders of Bonds. In order to secure the payment of the Bonds, the Issuer hereby covenants and agrees with the Holders of the Bonds, as follows:

(A) The Issuer will not make or cause or permit to be made any application of the proceeds of the Bonds except in accordance with the provisions of Section 4.03 hereof, or of any moneys held in the Construction Fund except in accordance with the provisions of Section 4.04 hereof.

(B) The Issuer will comply in all respects with the terms and provisions of any grant agreements applicable to the System and with all applicable State and federal laws and regulations governing the implementation of such grant agreements.

(C) The Issuer will, in the event proceeds of the grants for the System and/or proceeds of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Bonds, are not sufficient or available to pay the Bonds in full by the maturity date of the Bonds, issue and sell its refunding bonds and apply the proceeds of its refunding bonds to the payment of the Bonds.

(D) The Issuer will comply with all the terms and conditions of the Loan Agreement.

Section 3.13. Required Notices to Holders of Bonds. The Issuer will provide the Authority and the Council prompt written notice, appropriately documented, of any of the following events:

- (A) Any suspension, termination or modification of any grant;
- (B) The authorization by the Issuer of any additional indebtedness related to the System;  
and
- (C) Any activity that would stop the work schedule on the Project.

Section 3.14. "Amended Schedule B." Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule B" to the Loan Agreement, setting forth the actual Costs of the Project and sources of funds therefor.

#### ARTICLE IV

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

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

- (1) Revenue Fund;
- (2) Construction Fund;
- (3) Renewal and Replacement Fund; and
- (4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created and established or contained with the Commission:

- (1) Series 1998 Bonds Sinking Fund;
  - (a) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account.

Section 4.03. Bond Proceeds; Construction Fund. From the moneys received from time to time from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Bonds, there shall first be paid any and all borrowing by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, including interest accrued thereon to the date of such payment.

B. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Series 1998 Bonds Reserve Account the sum, if any, set forth herein or in a Supplemental Resolution for funding of the Series 1998 Bonds Reserve Account.

C. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank in the Construction Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 4.04.

D. The Depository Bank shall act as a trustee and fiduciary for the Holder of the Bonds with respect to the Construction Fund and shall comply with all requirements with respect to the disposition of the Construction Fund set forth in this Resolution. Moneys in the Construction Fund shall be used solely to pay costs of the Project and, until so expended, are hereby pledged as additional security for the Bonds.

Section 4.04. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

Disbursements from the Construction Fund, except for the costs of issuance of the Bonds, which shall be made upon request of the Issuer, shall be made only after submission to the Depository Bank of a certificate, signed by the Chairman or Acting Chairman and the Consulting Engineer, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after

deduction of any such portion. All payments made from the Construction Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Fund. The Consulting Engineer shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending application as provided in this Section 4.04, money and funds in the Construction Fund shall be invested and reinvested at the direction of the Issuer in Qualified Investments.

When 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 Construction Fund shall be applied as directed by the Council.

Section 4.05. Covenants of the Issuer as to Revenues and Funds. So long as the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 1998 Bonds Reserve Account, a sum sufficient to pay, when due, the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of the 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 Depository Bank, in a fund known as the "Revenue Fund" which is hereby established with the Depository Bank. The Revenue Fund shall constitute a trust fund for the purposes provided herein and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided herein.

(B) Disposition of Revenues. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

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

(2) The Issuer shall next, (i) on the required payment dates, remit all payments of principal and interest owed on the Prior Bonds under the terms of the Prior Resolution, on a parity with the Series 1998 Bonds, (ii) on the first day of each month, commencing four (4) months prior to the first date of payment of interest on the Series 1998 Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1998 Bonds Sinking Fund, a sum equal to 1/3 of the amount of interest which will become due on said Bonds, if any, on a parity with the Prior Bonds, on the next ensuing quarterly interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next quarterly interest payment date is less than four (4) months, then such monthly payments shall be increased proportionately to provide, one (1) month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (iii) on the first day of each month, commencing four (4) months prior to the first date of payment of principal on the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1998 Bonds Sinking Fund, a sum equal to 1/3 of the amount of principal which will mature and become due on said Bonds, on a parity with the

Prior Bonds, on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1998 Bonds Sinking Fund and the next quarterly principal payment date is less than four (4) months, then such monthly payments shall be increased proportionately to provide, one (1) month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall (i) on the required payment dates, remit for deposit any reserve payments required to be made on the Prior Bonds under the terms of the Prior Resolution and (ii), on the first day of each month, commencing four (4) months prior to the first date of payment of principal of the Series 1998 Bonds, if not fully funded upon issuance of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1998 Bonds Reserve Account, an amount equal to 1/120 of the Series 1998 Bonds Reserve Requirement, which is the maximum amount of principal and interest which will become due on the Bonds in any year; provided, that no further payments shall be made into the Series 1998 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 1998 Bonds Reserve Requirement. All funds in the Series 1998 Bonds Reserve Account shall be kept separate and apart by the Commission from other funds of the Issuer and shall be invested and reinvested in Qualified Investments.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Series 1998 Bonds Reserve Account and the Prior Bonds. 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, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1998 Bonds Reserve Account [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 to the maximum extent required hereof] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 1998 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Bonds as the same shall become due. Moneys in the Series 1998 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Bonds, as the same shall come due when other moneys in the attendant Sinking Fund are insufficient therefore, and for no other purpose.

All investment earnings on moneys in the Series 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the Bonds, and then to the next ensuing principal payments due thereon.

Any withdrawals from the Series 1998 Bonds Reserve Account which result in a reduction in the balance of the Series 1998 Bonds Reserve Account to below the Series 1998 Bonds

Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full to the Series 1998 Bonds Sinking Fund for payment of debt service on the Series 1998 Bonds.

As and when additional bonds ranking on a parity with the Bonds and the Prior Bonds are issued, provision shall be made for additional payments into the sinking fund sufficient to pay the interest on such additional parity bonds and accomplish retirement thereof at maturity and to accumulate a balance in the reserve account in an amount equal to the maximum provided and required to be paid into the sinking fund in any year for account of the Bonds and such additional bonds which by their terms are payable from such sinking fund.

The Issuer shall not be required to make any further payments into the Series 1998 Bonds Sinking Fund or into the Series 1998 Bonds Reserve Account therein when the aggregate amount of funds in said Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Resolution then Outstanding and all interest to accrue until the maturity thereof.

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

The Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bonds and any additional bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues of the System. Surplus Revenues may be used for any lawful purpose of the System.

Whenever the money in the Series 1998 Bonds Reserve Account shall be sufficient to prepay the Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the 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 1998 Bonds Reserve Account, and the Depository Bank is hereby designated as the Fiscal Agent for the administration of the Renewal and Replacement Fund, herein provided, and

all amounts required for the Series 1998 Bonds Reserve Account and the Renewal and Replacement Fund 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. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used the Authority shall have a lien thereon for further securing payment of the Bonds and the interest thereon, but the Commission and the Depository Bank shall not be a trustee as to such funds.

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

The Commission and the Depository Bank, at the direction of the Issuer, shall keep the moneys in the Series 1998 Bonds Reserve Account and the Renewal and Replacement Fund, respectively, 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 Resolution shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia State Investment Management Board. Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account.

(C) Change of Depository Bank. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the aforesaid bank should cease for any reason to serve or if the Issuer determines by supplemental resolution that said bank or its successor should no longer serve as Depository Bank. Upon any such change, the Issuer will cause notice of the change to be sent by registered or certified mail to the Authority.

(D) Charges and Fees. The Issuer shall remit from the Revenue Fund to the Commission and to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Commission and the Depository Bank then due.

(E) Investment of Excess Balances. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, in a lawful manner for securing deposits of state and municipal funds under the laws of the State.

(F) Remittances. All remittances made by the Issuer to the Commission and to the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

(G) Gross Revenues. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE V

### ADDITIONAL COVENANTS OF THE ISSUER

Section 5.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article V. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Section 5.02. Bonds Not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation on indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 5.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 1998 Bonds issued hereunder shall be secured forthwith by a first lien on the Net Revenues derived from the operation of 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 Bonds and to make the payments into the Series 1998 Bonds Sinking Fund, including the Series 1998 Bonds Reserve Account therein, and all other payments provided for in the Resolution are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds, on a parity with the Prior Bonds, as the same become due, and for the other purposes provided in the Resolution.

Section 5.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the existing or proposed rate resolution of the Issuer adopted on July 22, 1998, and to take effect upon completion of the Project, as approved by the Public Service Commission of West Virginia by Recommended Decision entered on April 24, 1998, in Case No. 97-0964-PWD-CN.

Section 5.05. Sale of the System. Except as otherwise required by state law, or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay all the Bonds, if any, Outstanding, or to effectively defease this Resolution in accordance with Section 8.01 hereof. The proceeds from any such sale, mortgage,

lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Series 1998 Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Series 1998 Bonds Sinking Fund and shall be applied only to the purchase of Bonds, on a parity with the Prior Bonds, of the last maturities then Outstanding at prices not greater than the par value thereof plus three percent (3%) of such par value or otherwise. Such payment of such proceeds into the Series 1998 Bonds Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Resolution. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 5.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 5.06 and in Section 5.07B, and, so long as any of the Bonds are outstanding, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues

All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1998 Bonds and the Prior Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Series 1998 Bonds Reserve Account and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds and the Prior Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Resolution, or upon the System or any part thereof.

Section 5.07. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Bonds issued pursuant to this Resolution, except under the conditions and in the manner herein provided. No Parity Bonds shall be issued without the prior written consent of the Authority and the Council.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1998 Bonds and the Prior Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Chairman a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any twelve (12) consecutive months, within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

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

The "estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements

to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed with the Chairman prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds and Prior Bonds theretofore issued pursuant to this Resolution or any prior resolution.

All Parity Bonds shall mature on the specified day of the years of maturities, and the quarterly interest thereon shall be payable on the days of each year specified herein or in any Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 1998 Bonds and the Prior Bonds. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 1998 Bonds and the Prior Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Resolution with respect to the Bonds then outstanding, and any other payments provided for in this Resolution, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Resolution.

B. Notwithstanding the foregoing, or any provision of Section 5.06 to the contrary, additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 5.07, if there is first obtained by the Issuer the written consent of the Authority to the issuance of bonds on a parity with the Bonds and the Prior Bonds.

Section 5.08. Books, Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority, acting by and through its Director, or his duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Issuer shall submit to the Authority such documents and information as it may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan or any State and federal grants or other sources of financing for the Project.

The Issuer shall permit the Authority and its agents and representatives to have access to the records pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed by the Uniform System of accounts promulgated by the PSC. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system, which may be installed remote from the direct supervision of the Governing Body, shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, Notes or other obligations outstanding and secured by a lien on the Net Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with OMB Circular 128, or any successor thereto, and the Single Audit Act and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation and that the Issuer's revenues are adequate to meet its expenses and debt service requirements.

The Issuer shall permit the Authority, or its agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

The Issuer shall also, during construction of the Project and for two years following the completion of the Project, complete a Monthly Financial Report, as described in the Loan Agreement, and forward a copy by the 15th of each month to the Authority and the Council.

Section 5.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file at the office of the Issuer, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for payment of principal of and interest on the Bonds, the Prior Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit in the reserve accounts or reserve accounts for obligations prior to or on a parity with the Bonds, the Prior Bonds are funded at least at the requirement therefor, such balance each year need only equal at least one hundred ten percent (110%) of the maximum amount required in any year for payment of principal of and interest on the Bonds, the Prior Bonds and all other obligations secured by a lien on or payable from such

revenues prior to or on a parity with the Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate resolution described in Section 5.04.

**Section 5.10. Operating Budget and Audit.** The Issuer shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall, within thirty (30) days of the adoption thereof, mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bond, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bond, or anyone acting for and on behalf of such Holder of any Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an Independent Certified Public Accountant, in compliance with OMB Circular 128, or any successor thereto, and the Single Audit Act, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

**Section 5.11. No Competing Franchise.** To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

**Section 5.12. Engineering Services and Operating Personnel.** The Issuer will obtain a certificate of the Consulting Engineer in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared on behalf of the Consulting Engineers, which have been approved by all necessary governmental bodies. The

Consulting Engineer shall certify to the Authority and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of the Loan Agreement.

Section 5.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid, to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of a sewer system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 5.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 5.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, ON ALL above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of one hundred percent (100%) of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such Workers' Compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts satisfactory to the Authority and the Council; and as is customarily carried with respect to works and properties similar to the Project. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 5.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Section 5.17. Completion and Operation of Project; Permits and Orders. The Issuer hereby covenants and agrees to complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

The Issuer will obtain all permits and approvals required by State and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System with the appeal periods having expired without successful appeal.

Section 5.18. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all terms and conditions of the Loan Agreement. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority or other state, federal or local bodies in regard to the purchase and acquisition of the Project and the operation, maintenance and use of the System.

Section 5.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of ten percent (10%) of the Net Proceeds of the Bonds are used for private business use if, in addition, the payment of more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a private business use or in payments in respect of property used or to be used for a private business use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a private business use, and (ii) and that, in the event that both (A) in excess of five percent (5%) of the Net Proceeds of the Bonds are used for a private business use, and (B) an amount in excess of five percent (5%) of the principal or five percent (5%) of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said private business use or in payments in respect of property used or to be used for said private business use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said private business use, then said excess over said five percent (5%) or Net Proceeds of the Bonds used for a private business use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such private business use is related.

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

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

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

E. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 5.20. Securities Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit, annual operating related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, (240, 15c2-12).

Section 5.21. Public Service Commission Approval. The Issuer shall obtain all requisite orders of and approvals from the Public Service Commission of West Virginia necessary for the construction of the Project and operation of the System, and the Authority shall receive an opinion of counsel to the Issuer to such effect.

Section 5.22. Restrictions on Use of Bond Proceeds. The Issuer agrees that it will be in default hereunder if any Bond proceeds are used for a purpose that contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

## ARTICLE VI

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 6.01. Investments. Any moneys held as a part of the funds and accounts created or continued by this Resolution, other than the Revenue Fund, shall be invested and re-invested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 6.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current

market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are outstanding.

Section 6.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "Arbitrage Bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it or shall refrain from taking any action, as shall be deemed necessary by the Authority (including, without implied limitation, the timely filing of a Federal Information Return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate

Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. To the extent not so performed by the Authority, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 6.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.03 in accordance with the requirements of Section 148(f) of the Code or such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Issuer shall submit to the Authority within fifteen (15) days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto. The Issuer shall furnish to the Authority such information with respect to earnings on all moneys constituting "Gross Proceeds" of the Bonds (as such term is defined in the Code) from time to time as the Authority may request. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority.

## ARTICLE VII

### DEFAULT AND REMEDIES

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

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

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds in this Resolution, any Supplemental Resolution, or in the Bonds, as the case may be, and such default shall have continued for a period of thirty (30) days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, any other bank or banking association holding any fund or account hereunder or a Holder of a Bond; or

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

Section 7.02. Remedies. Upon the happening and continuance of any Event of Default, any Holder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of the Holders of the Bonds including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of the Holders of the Bonds.

Section 7.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Resolution and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default in payment of principal or interest on the Bonds with respect to such Bond any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project or both, as provided by law, on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bond and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his, her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

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

Such receiver, in the performance of the powers hereinabove conferred upon him, her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and

decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

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

## ARTICLE VIII

### DEFEASANCE

Section 8.01. Defeasance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then this Resolution, the funds pledged under this Resolution and all covenants, agreements and other obligations of the Issuer to Holders of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited in the Bonds Payment Fund at the same or earlier time, shall be sufficient, to pay as and when due the principal of and interest, if any, on the Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Depository Bank either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which when due, will provide moneys which, together with the moneys, if any, deposited with the Depository Bank at the same time, shall be sufficient, to pay when due the principal of and interest, if any, due and to become due on said Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Depository Bank pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the respective principal of and interest, if any, on the Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Depository Bank if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and interest, if any, to become due on the Bonds on and prior to such maturity dates thereof, and interest earned from such reinvestment shall be paid over to the Issuer as received by the Depository Bank free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01. Amendment or Modification of Resolution. Prior to issuance of the Bonds, this Resolution may be amended or supplemented in any way by a Supplemental Resolution. Following issuance of the Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the Holders of the Bonds then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein pledged therefor without the consent of the Holder thereof.

Section 9.02. Resolution Constitutes Contract. The provisions of this Resolution shall constitute a contract between the Issuer and the Holder of the Bonds, and no change, variation or alteration of any kind of the provisions of the Resolution shall be made in any manner, except as in this Resolution provided.

Section 9.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution or the Bonds.

Section 9.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 9.05. Conflicting Provisions Repealed. All resolutions, indentures or orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 9.06. 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 and passage 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, Acting Chairman, Secretary and members of the Public Service Board were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 9.07. Effective Date. This Resolution shall take effect immediately upon adoption hereof.

Section 9.08. Statutory Notice and Public Hearing. Prior to adoption hereof, an abstract of this Resolution determined to contain sufficient information as to give notice of the contents hereof shall be published in a qualified newspaper published and of general circulation in Lincoln

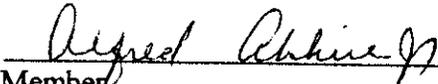
County, together with a notice stating that this Resolution will be considered for adoption and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Issuer's Public Service Board upon a date certain, not less than ten (10) days subsequent to the date of the publication of such abstract of this Resolution and notice, and present protests, and that a certified copy of this Resolution is on file with the Issuer for review by interested persons during office hours of the Issuer. At such hearing, all objections and suggestions shall be heard and the Issuer's Public Service Board shall take such action as it shall deem proper in the premises.

Adopted Following Public Hearing - July 22, 1998

Adopted this 22nd day of July, 1998.

BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT

By:   
Acting Chairman

By:   
Member

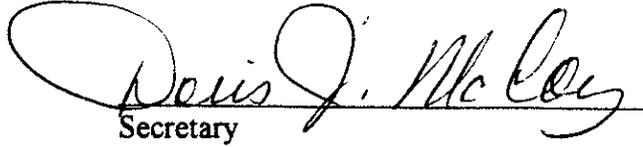
By: \_\_\_\_\_  
Member

CERTIFICATION

The undersigned does hereby certify that the attached Bond Resolution is a true and accurate copy of the Bond Resolution duly adopted by the Public Service Board of BRANGLAND/MIDKIFF PUBLIC SERVICE DISTRICT on July 22, 1998, and that the foregoing document remains in full force and effect and has not been amended.

Dated: July 22, 1998.

[SEAL]

  
Secretary



**BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT**  
**RESOLUTION PROVIDING FOR RATES FOR WATER**  
**SERVICES OF THE BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT,**  
**LINCOLN, COUNTY, WEST VIRGINIA.**  
**TO ALL CUSTOMERS, COMMERCIAL AND RESIDENTIAL,**  
**SERVED BY SAID DISTRICT**

**BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT:**

Section 1. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Chapter 16, Article 13A, Section 9, and Chapter 24, Article 2, Section 4a, of the Code of West Virginia, as amended, and General Order No. 200.4 PSD Adm. Reg. 24-1 of the Public Service Commission of West Virginia, and amendments thereto, and other applicable provisions of law.

Section 2. Findings and Determinations. It is hereby found determined and declared as follows:

a. The Branchland/Midkiff Public Service District (the "District"), a public corporation, Lincoln County, West Virginia, is the owner of a public utility providing water service to commercial and residential customers residing inside the District's limits.

b. The present rates and charges for said water service fail to provide sufficient revenues for the maintenance and efficient operation of said utility and related debt service for providing water services to its customers residing within the District's limits as required by the laws of the State of West Virginia.

c. It is deemed necessary and essential for the health, welfare, safety, advantage and convenience of the customers of the District and to comply with West Virginia law in the operation thereof that the present rates and charges for the services provided be increased to provide sufficient revenue for the maintenance and operation thereof and to pay all debt service.

d. By order of the Public Service Commission of West Virginia in Case No. 97-0964-PWD-CN, the attached rates were approved by the Commission, and the District was directed to adopt this rate resolution with amended rates contained herein.

**NOW, THEREFORE, BE IT RESOLVED AND ENACTED** by the Public Service Board of the Branchland/Midkiff Public Service District, Lincoln County, West Virginia:

(1) That the present water rates and charges of the Branchland/Midkiff Public Service District, a public corporation, Lincoln County, West Virginia, for providing water services to the residential and commercial customers residing within the District's limits, be and hereby are increased by providing for monthly rates and charges under the following schedule of rates and charges:

Applicable in Entire Territory Served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

RATES

First	2,000 gallons used per month	\$7.58 per 1,000 gallons
Next	3,000 gallons used per month	\$6.54 per 1,000 gallons
Next	5,000 gallons used per month	\$6.20 per 1,000 gallons
Next	10,000 gallons used per month	\$5.85 per 1,000 gallons
All over	20,000 gallons used per month	\$5.16 per 1,000 gallons

MINIMUM CHARGE

No bill shall be rendered for less than that shown on the following schedule:

5/8"	\$15.35/month
3/4"	23.03/month
1"	38.38/month
1 1/4"	56.03/month
1 1/2"	76.75/month
2"	122.80/month
3"	230.25/month
4"	383.75/month
6"	767.50/month
8"	1,228.00/month

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

CONNECTION CHARGE

\$50.00 until construction is completed past the applicant's point-of-service.

\$200.00 for all other new service connections.

RECONNECTION CHARGE

\$10.00

RETURNED CHECK CHARGE

The District may not collect any fee greater than that charged to it by a banking institution and under no circumstances shall the fee collected exceed \$15.00.

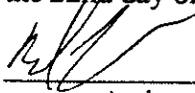
LEAK ADJUSTMENT INCREMENT

\$2.85 per 1,000 gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

(2) That a vote on the adoption of this Resolution was taken by the Public Service Board at a special meeting of the Branchland/Midkiff Public Service District held at the District's office on July 22, 1998, at 6:30 p.m.; and

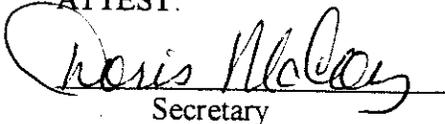
(3) That this Resolution shall become effective and take effect immediately with the rates approved for all service rendered by the District on or after the extensions are substantially complete as certified by the District's project engineer.

PASSED AND APPROVED at a special meeting of the Public Service Board of the Branchland/Midkiff Public Service District held on the 22nd day of July, 1998.



\_\_\_\_\_  
Acting Chairman

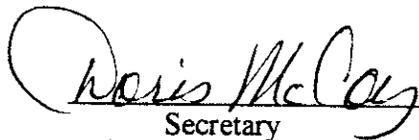
ATTEST:

  
Secretary

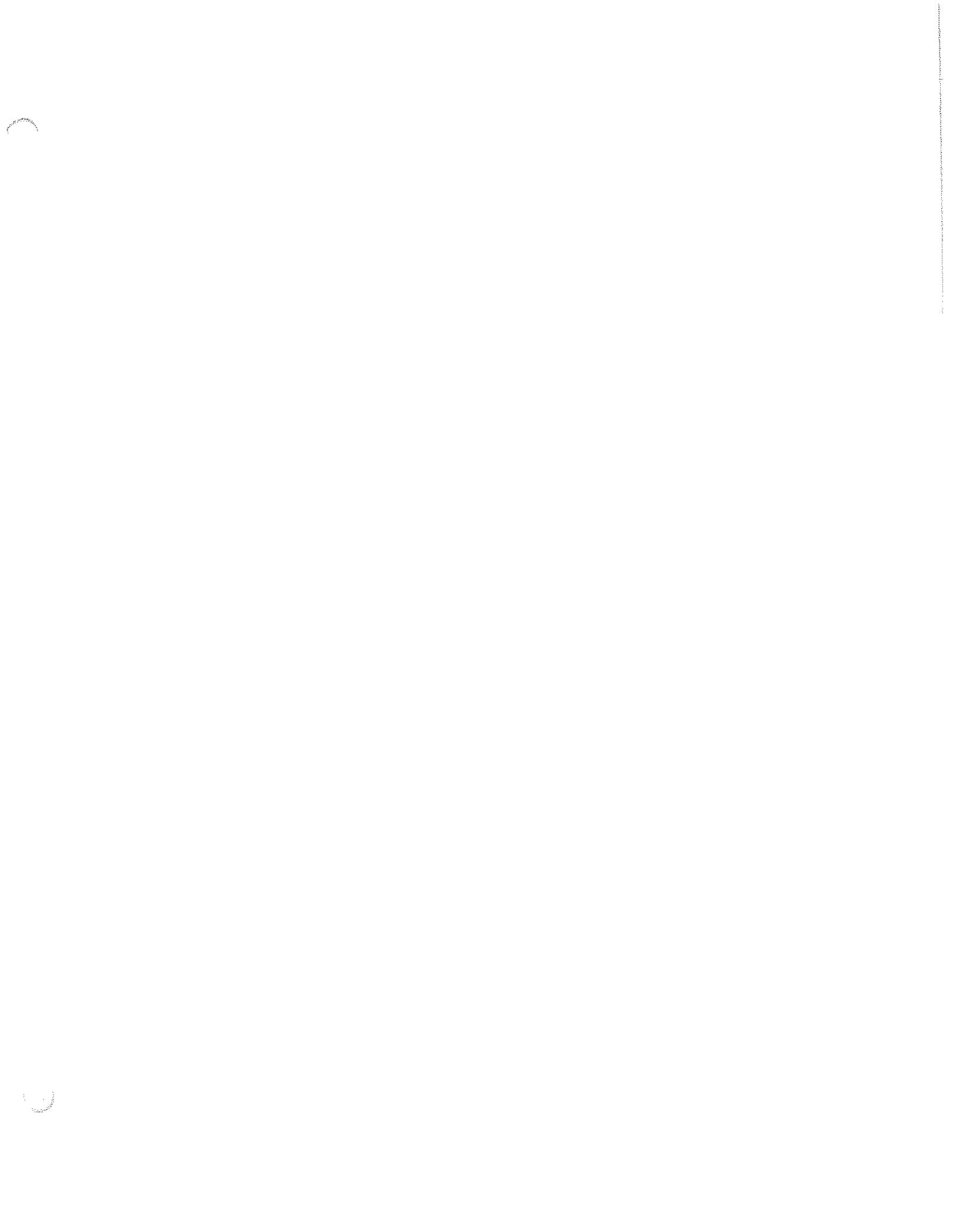
CERTIFICATE

I, Doris McCoy, Secretary of the Branchland/Midkiff Public Service District, Lincoln County, West Virginia, hereby certify that the foregoing is an exact and true copy of the Resolution of the Branchland/Midkiff Public Service District, adopted at a special of the Public Service Board called and held on the 22nd day of July, 1998, with a quorum present and voting.

Given under my hand and official seal of the Branchland/Midkiff Public Service District this 22nd day of July, 1998.

  
Secretary

(SEAL)



# THE LINCOLN JOURNAL Inc.

Publishers Of: The Lincoln Journal / The Weekly News Sentinel / The Lincoln Times

## AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA  
COUNTY OF LINCOLN, to wit:

I, THOMAS A. ROBINSON, Publisher, being duly sworn upon my oath do depose and say that I am proprietor of the entitle:

**THE LINCOLN JOURNAL AND THE WEEKLY NEWS SENTINEL**  
two separate newspapers, both being a **weekly** newspaper; that such papers have been published for more than one year prior to publication of the annexed notice described below; that such newspapers are regularly published weekly, for at least fifty weeks during the calendar year, the Municipality of Hamlin, Lincoln County, West Virginia; that such newspapers are newspapers of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspapers average in length of four or more pages, exclusive of any cover, per issue; that such newspapers are circulated to the general public at a definite price or consideration; that such newspapers are newspapers to which the general public resorts for posting of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of

Branchland / Truckee Water Revenue Bonds

was duly published in said newspaper once a week for 1 weeks (Class I),

commencing with the issue of the 8<sup>th</sup> day of July 1998, and ending with the issue of the 8<sup>th</sup> day of July 1998, (and was posted at the \_\_\_\_\_ on the day of \_\_\_\_\_, 1998); that said

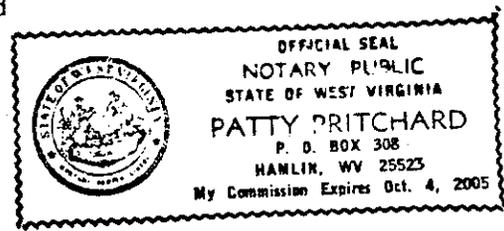
annexed notice was published on the following dates: \_\_\_\_\_

and that the cost of publishing the annexed notice as aforesaid was \$ 69.30

Publishers Signature: [Signature]

Taken, subscribed and sworn before me in my said county this 15<sup>th</sup> day of July 1998. My commission expires 04/4/2005

Patty Pritchard  
Notary Public of Lincoln County, West Virginia



## Legal Advertisement

**Notice to Residents of the Branchland/Midkiff Public Service District, Lincoln County, West Virginia and Persons Interested in Resolution for Proposed Issuance of \$1,280,000 Branchland/Midkiff Public Service District, Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund)**

Pursuant to the provisions of West Virginia Code chapter 6, Article 9A, Section 9, and in accordance with the provisions of West Virginia Code Chapter 16, Article 13A, as amended, you hereby notified that a meeting of the Public Service Board (the "Board") of the Branchland/Midkiff Public Service District (the "District") will be held on the 22nd day of July, 1998, at which meeting the Board will consider for adoption a resolution entitled:

**R E S O L U T I O N  
AUTHORIZING THE  
CONSTRUCTION OF NEW  
PUBLIC WATER FACILITIES  
OF BRANCHLAND/MIDKIFF  
PUBLIC SERVICE DISTRICT  
AND THE FINANCING OF  
THE COSTS THEREOF, NOT  
OTHERWISE PROVIDED,  
THROUGH THE ISSUANCE  
BY THE DISTRICT OF  
\$1,280,000 IN AGGREGATE  
PRINCIPAL AMOUNT OF  
WATER REVENUE BONDS,  
SERIES 1998 (WEST  
VIRGINIA INFRASTRUCTURE  
FUND), PROVIDING FOR THE  
RIGHTS AND REMEDIES OF  
AND SECURITY FOR THE  
HOLDERS OF SUCH BONDS;  
APPROVING A LOAN  
AGREEMENT RELATING TO  
SUCH BONDS;  
AUTHORIZING THE SALE  
AND PROVIDING FOR THE  
TERMS AND PROVISIONS  
OF SUCH BONDS; AND  
ADOPTING OTHER  
PROVISIONS RELATING  
THERE TO.**

The Resolution would authorize the issuance of Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund) (the Bonds), of the District in the amount of \$1,280,000. The Bonds would provide funds to finance a portion the costs of an

extension to the water system (the "System") of the District. The Board expects to establish rates to repay the indebtedness to be incurred for the acquisition and construction of an extension to the water system and the financing of the Bonds.

The entire amount of the principal of and interest on the Bonds will be paid from Surplus Revenues of the System, subject to the lien on said Surplus Revenues established for the debt previously issued by the District.

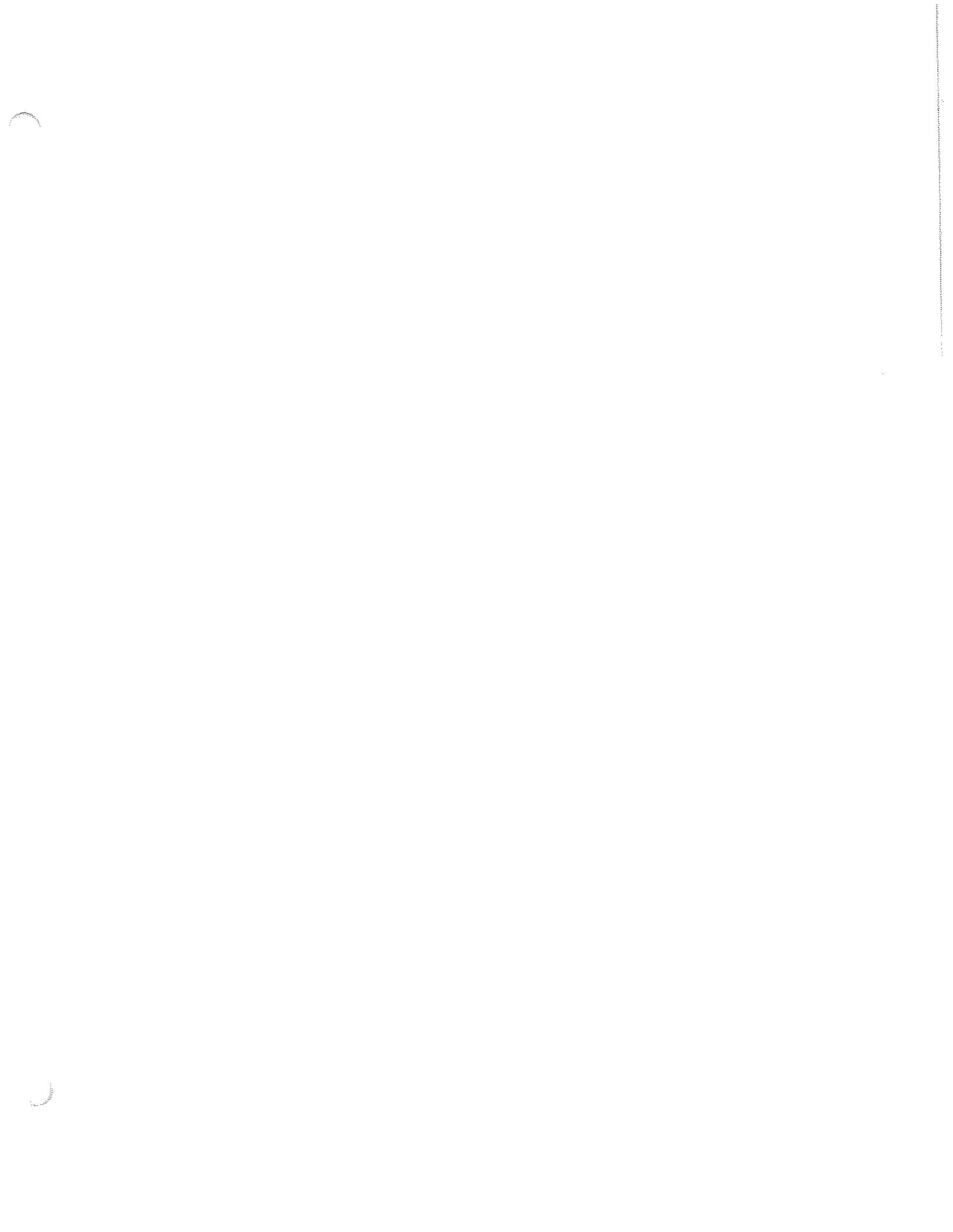
The District previously petitioned the Public Service Commission of West Virginia (the "Commission") for approval of the issuance of the Bonds. The Commission entered its Recommended Decision (the "Decision") on April 24, 1998, which became final and non-appealable on May 14, 1998. The Decision authorized the District to issue the Bonds in the amount of \$1,280,000, with such amount to be loaned to the District by the Council.

A certified copy of the Resolution and a description of the scope of the proposed project are available for examination by any interested person at the District's office during regular office hours of such office which are 8:30 a.m. to 3:30 p.m. Monday through Friday.

The meeting will be held at the Public Service District's office in Branchland, West Virginia, on the 22nd day of July, 1998, at 6:30 p.m. and person or persons interested may appear before the Board and be heard and may present protests and objections to the passage of the Resolution and the issuance of the Bonds.

Dated this 8th day of July, 1998.

Branchland/Midkiff Public  
Service District  
Lincoln County, West  
Virginia  
Harold L. Smith,  
Chairman  
Dons McCoy, Secretary



\$1,280,000  
BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

ABSTRACT OF MINUTES OF MEETING TO CONSIDER ADOPTION  
OF BOND RESOLUTION, RATE RESOLUTION AND OTHER RESOLUTIONS

I, Doris McCoy, Secretary of the Branchland/Midkiff Public Service District (the "District"), hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the said District:

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The Public Service Board of the Branchland/Midkiff Public Service District met in special session, pursuant to notice duly given, on the 22nd day of July, 1998, at Branchland, West Virginia, at the hour of 6:30 p.m.

PRESENT: Ronald D. Lucas  
Alfred Abshire, Jr.

ABSENT: Harold R. Smith

In the absence of Harold R. Smith, the District's Chairman, Ronald D. Lucas was designated to serve as Chairman of the meeting. The Chairman announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Resolution was subject to protests and suggestions from any interested person.

Thereupon, the Chairman stated that it would be in order to consider the Bond Resolution for adoption, and he asked the Secretary to read the title of the Resolution as follows:

RESOLUTION AUTHORIZING THE CONSTRUCTION OF NEW PUBLIC WATER FACILITIES OF BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COSTS THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF \$1,280,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1998 (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion duly made and seconded, it was unanimously ordered that said Bond Resolution be adopted.

Thereupon, the Chairman stated that it would be in order to consider the Rate Resolution for adoption, and he asked the Secretary to read the title of the Resolution as follows:

RESOLUTION PROVIDING FOR RATES FOR WATER  
SERVICES OF THE BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT,  
LINCOLN COUNTY, WEST VIRGINIA,  
TO ALL CUSTOMERS, COMMERCIAL AND RESIDENTIAL,  
SERVED BY SAID DISTRICT

Thereupon, on motion duly made and seconded, it was unanimously ordered that said Rate Resolution be adopted.

Thereupon, the Chairman stated that it would be in order to consider the Rules of Procedure Resolution for adoption, and he asked the Secretary to read the title of the Resolution as follows:

RESOLUTION OF THE BOARD OF THE BRANCHLAND/MIDKIFF  
PUBLIC SERVICE DISTRICT ADOPTING RULES OF PROCEDURE

Thereupon, on motion duly made and seconded, it was unanimously ordered that said Rules of Procedure Resolution be adopted.

Thereupon, the Chairman stated that it would be in order to consider the Construction Fund Resolution for adoption, and he asked the Secretary to read the title of the Resolution as follows:

RESOLUTION AUTHORIZING AND CREATING THE ESTABLISHMENT OF A NEW  
ACCOUNT AT THE TWENTIETH STREET BANK, WEST HAMLIN, WEST VIRGINIA, TO  
BE KNOWN AS THE "CONSTRUCTION FUND" AND INTO WHICH BOND PROCEEDS  
SHALL BE DEPOSITED AS PROVIDED BY THE BOND RESOLUTION.

Thereupon, on motion duly made and seconded, it was unanimously ordered that said Construction Fund Resolution be adopted.

Thereupon, the Chairman stated that it would be in order to consider the Payment Request Resolution for adoption, and he asked the Secretary to read the title of the Resolution as follows:

RESOLUTION OF THE BOARD OF THE BRANCHLAND/MIDKIFF  
PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING  
TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS,  
BETTERMENTS AND IMPROVEMENTS TO THE WATER FACILITIES  
OF THE DISTRICT AND AUTHORIZING PAYMENT THEREOF

Thereupon, on motion duly made and seconded, it was unanimously ordered that said Construction Fund Resolution be adopted.

Thereupon, the Chairman stated that it would be in order to consider the Appointment of Acting Chairman Resolution for adoption, and he asked the Secretary to read the title of the Resolution as follows:

RESOLUTION OF THE BOARD OF THE BRANCLAND/MIDKIFF  
PUBLIC SERVICE DISTRICT APPOINTING RONALD D. LUCAS  
TO SERVE AS ACTING CHAIRMAN

Thereupon, on motion duly made and seconded, it was unanimously ordered that said Appointment of Acting Chairman Resolution be adopted.

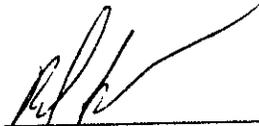
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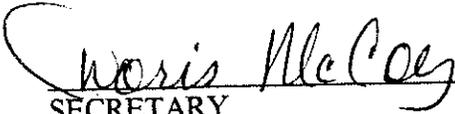
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After the completion of all business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

(SEAL)

  
\_\_\_\_\_  
ACTING CHAIRMAN

  
\_\_\_\_\_  
SECRETARY

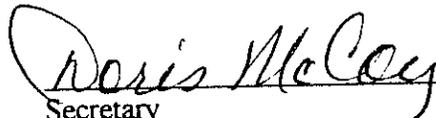
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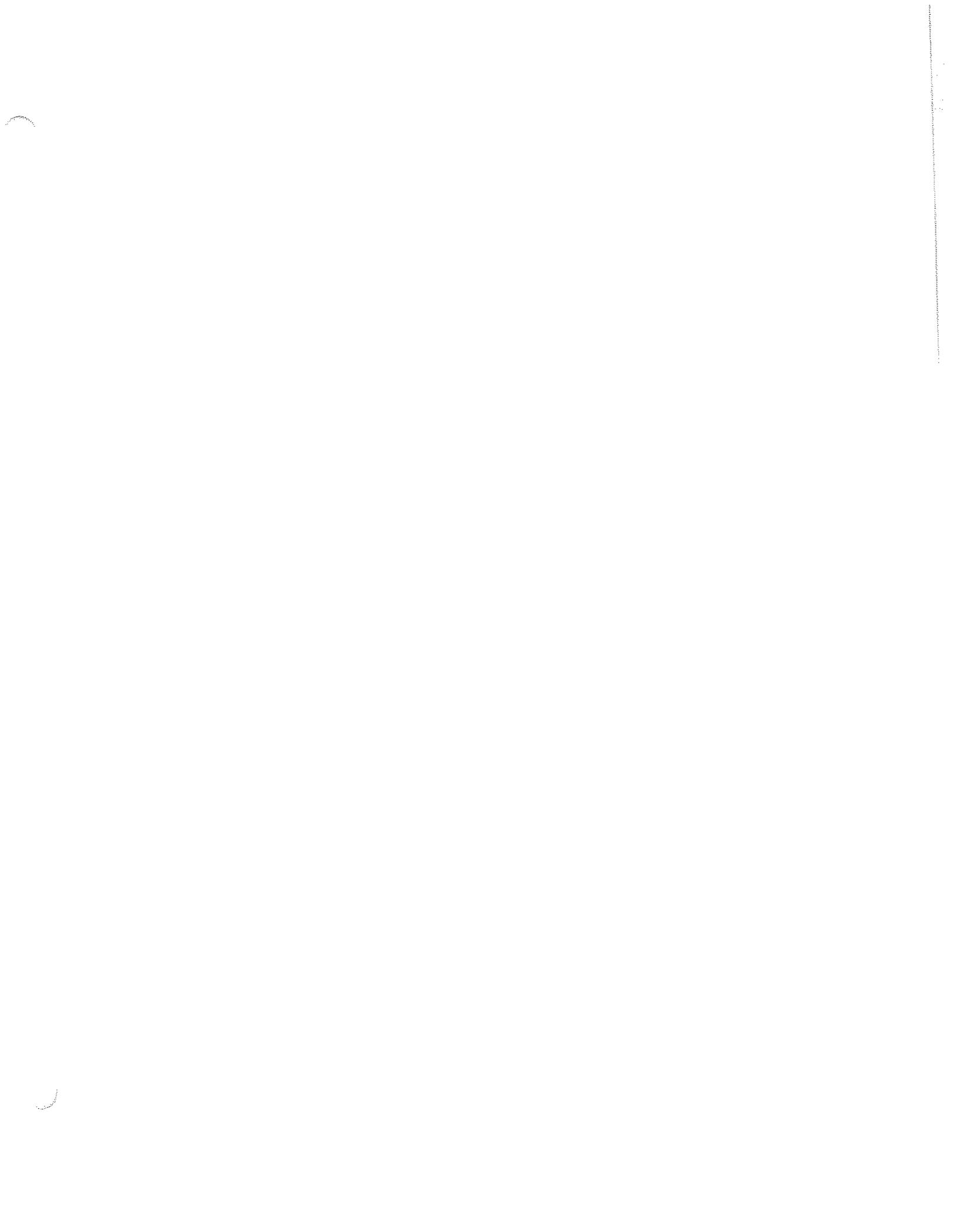
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I further hereby certify that the foregoing action of said Public Service Board remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 29th day of July, 1998.

  
\_\_\_\_\_  
Secretary



IC/WDA-1  
(July 1996)

## LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the governmental agency designated below (the "Governmental Agency");

BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT  
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to construct, operate and improve a project, as defined by the Act, and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate resident engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 15th of each month to the Authority and Council.

counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of water development projects and satisfactory to the Authority, to such effect, such certificate to be in form and substance satisfactory to the Authority, and evidence satisfactory to the Authority of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the

X to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds, if any (the "Reserve Account"), was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the gross or net revenues from the System, as more fully set forth in Schedules X and Y attached hereto;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the reserve account, if any, established for the payment of debt service on the Local Bonds (the "Reserve Account") is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement") and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority, which report shall include a statement that the Governmental Agency is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Governmental Agency's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Governmental Agency shall annually adopt a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof;

(xiii) That for wastewater systems, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date of first payment at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the State's general obligation bonds unless otherwise agreed to by the Council.

#### ARTICLE V

Certain Covenants of the Governmental Agency;  
Imposition and Collection of User Charges;  
Payments To Be Made by  
\_\_\_Governmental Agency to the Authority\_\_\_

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.3 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.4 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.5 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.6 This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT

(SEAL)

By: [Signature]  
Its: [Signature]

Date: 7/23/97

Attest:

[Signature]  
Its: Secretary

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: [Signature]  
Director

Date: 7/29/98

Attest:

[Signature]  
Secretary-Treasurer

pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this \_\_\_ day of \_\_\_\_, 19\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_

West Virginia License No. \_\_\_\_\_

[SEAL]

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Governmental Agency without the consent of the Authority.

3. The Governmental Agency is a duly organized and presently existing \_\_\_\_\_, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Governmental Agency has legally and effectively enacted the Local Act and all other necessary \_\_\_\_\_ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Governmental Agency, payable from the [net] revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the [net] revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. [If required, the Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for Federal income tax purposes.]

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

Witnesseth my signature this \_\_\_ day of \_\_\_, 19\_\_.

[Name of Governmental Agency]

By: \_\_\_\_\_  
Authorized Officer

CHASFS3:58465

Schedule Y  
Quarterly Debt Service Schedule

**Branchland-Midkiff Public Service District**  
**\$1,280,000**  
Infrastructure Fund Loan

Term (Yrs.): 40 Interest: 0.00%  
First Payment: 12/01/99 Final Payment: 6/1/38

Date	#	Principal	Interest	Total
9/1/99				
12/1/99	1	8,258.06		8,258.06
3/1/00	2	8,258.06		8,258.06
6/1/00	3	8,258.06		8,258.06
9/1/00	4	8,258.06		8,258.06
12/1/00	5	8,258.06		8,258.06
3/1/01	6	8,258.06		8,258.06
6/1/01	7	8,258.06		8,258.06
9/1/01	8	8,258.06		8,258.06
12/1/01	9	8,258.06		8,258.06
3/1/02	10	8,258.06		8,258.06
6/1/02	11	8,258.06		8,258.06
9/1/02	12	8,258.06		8,258.06
12/1/02	13	8,258.06		8,258.06
3/1/03	14	8,258.06		8,258.06
6/1/03	15	8,258.06		8,258.06
9/1/03	16	8,258.06		8,258.06
12/1/03	17	8,258.06		8,258.06
3/1/04	18	8,258.06		8,258.06
6/1/04	19	8,258.06		8,258.06
9/1/04	20	8,258.06		8,258.06
12/1/04	21	8,258.06		8,258.06
3/1/05	22	8,258.06		8,258.06
6/1/05	23	8,258.06		8,258.06
9/1/05	24	8,258.06		8,258.06
12/1/05	25	8,258.06		8,258.06
3/1/06	26	8,258.06		8,258.06
6/1/06	27	8,258.06		8,258.06
9/1/06	28	8,258.06		8,258.06
12/1/06	29	8,258.06		8,258.06
3/1/07	30	8,258.06		8,258.06
6/1/07	31	8,258.06		8,258.06
9/1/07	32	8,258.06		8,258.06
12/1/07	33	8,258.06		8,258.06
3/1/08	34	8,258.06		8,258.06
6/1/08	35	8,258.06		8,258.06
9/1/08	36	8,258.06		8,258.06
12/1/08	37	8,258.06		8,258.06
3/1/09	38	8,258.06		8,258.06
6/1/09	39	8,258.06		8,258.06
9/1/09	40	8,258.06		8,258.06

**Schedule Y**  
**Quarterly Debt Service Schedule**

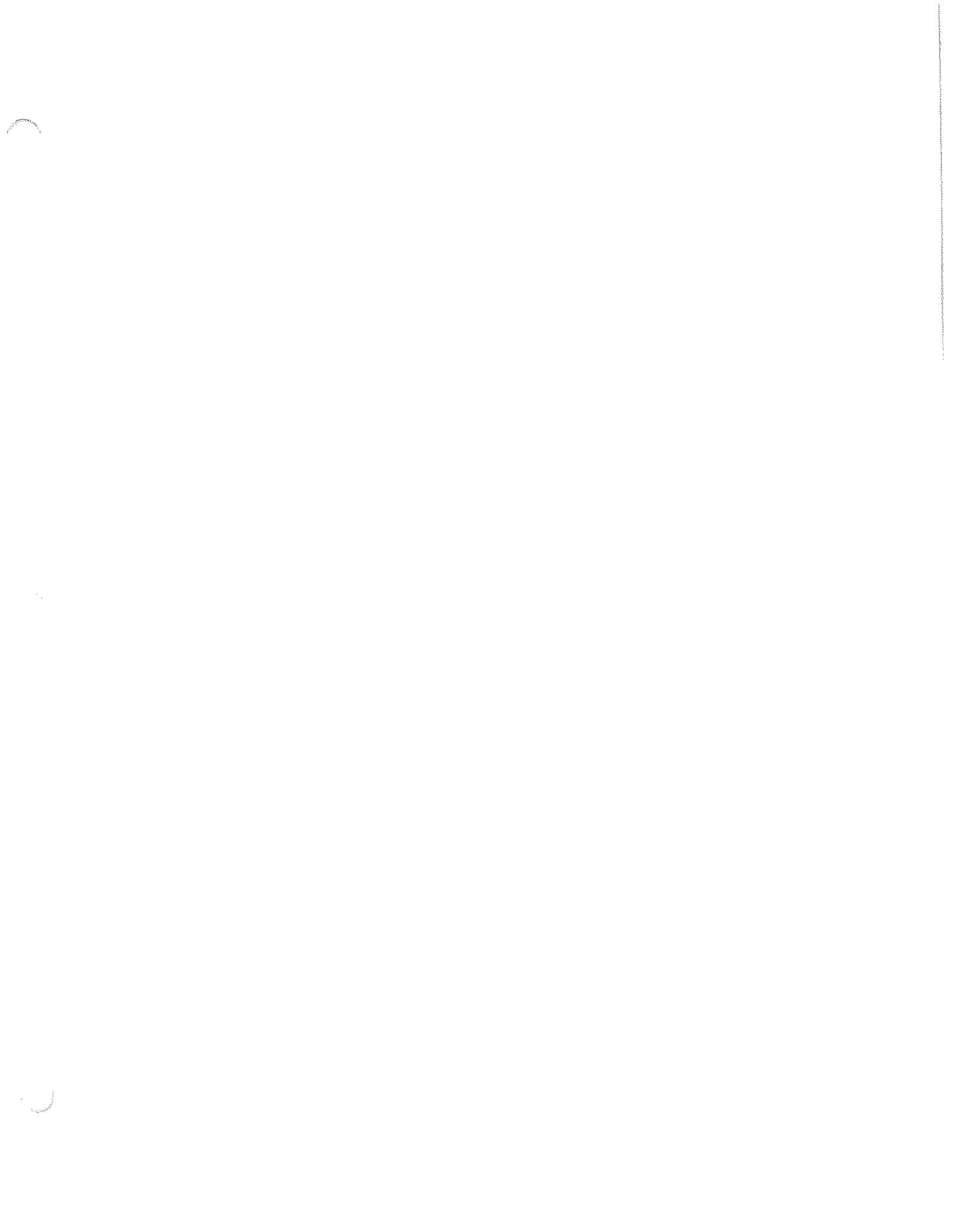
<b>Date</b>	<b>#</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
12/1/09	41	8,258.06		8,258.06
3/1/10	42	8,258.06		8,258.06
6/1/10	43	8,258.06		8,258.06
9/1/10	44	8,258.06		8,258.06
12/1/10	45	8,258.06		8,258.06
3/1/11	46	8,258.06		8,258.06
6/1/11	47	8,258.06		8,258.06
9/1/11	48	8,258.06		8,258.06
12/1/11	49	8,258.06		8,258.06
3/1/12	50	8,258.06		8,258.06
6/1/12	51	8,258.06		8,258.06
9/1/12	52	8,258.06		8,258.06
12/1/12	53	8,258.06		8,258.06
3/1/13	54	8,258.06		8,258.06
6/1/13	55	8,258.06		8,258.06
9/1/13	56	8,258.06		8,258.06
12/1/13	57	8,258.06		8,258.06
3/1/14	58	8,258.06		8,258.06
6/1/14	59	8,258.06		8,258.06
9/1/14	60	8,258.06		8,258.06
12/1/14	61	8,258.06		8,258.06
3/1/15	62	8,258.06		8,258.06
6/1/15	63	8,258.06		8,258.06
9/1/15	64	8,258.06		8,258.06
12/1/15	65	8,258.06		8,258.06
3/1/16	66	8,258.06		8,258.06
6/1/16	67	8,258.06		8,258.06
9/1/16	68	8,258.06		8,258.06
12/1/16	69	8,258.06		8,258.06
3/1/17	70	8,258.06		8,258.06
6/1/17	71	8,258.06		8,258.06
9/1/17	72	8,258.06		8,258.06
12/1/17	73	8,258.06		8,258.06
3/1/18	74	8,258.06		8,258.06
6/1/18	75	8,258.06		8,258.06
9/1/18	76	8,258.06		8,258.06
12/1/18	77	8,258.06		8,258.06
3/1/19	78	8,258.06		8,258.06
6/1/19	79	8,258.06		8,258.06
9/1/19	80	8,258.06		8,258.06
12/1/19	81	8,258.06		8,258.06
3/1/20	82	8,258.06		8,258.06
6/1/20	83	8,258.06		8,258.06
9/1/20	84	8,258.06		8,258.06
12/1/20	85	8,258.06		8,258.06
3/1/21	86	8,258.06		8,258.06
6/1/21	87	8,258.06		8,258.06
9/1/21	88	8,258.06		8,258.06

*Schedule Y*  
*Quarterly Debt Service Schedule*

Date	#	Principal	Interest	Total
12/1/21	89	8,258.06		8,258.06
3/1/22	90	8,258.06		8,258.06
6/1/22	91	8,258.06		8,258.06
9/1/22	92	8,258.06		8,258.06
12/1/22	93	8,258.06		8,258.06
3/1/23	94	8,258.06		8,258.06
6/1/23	95	8,258.06		8,258.06
9/1/23	96	8,258.06		8,258.06
12/1/23	97	8,258.06		8,258.06
3/1/24	98	8,258.06		8,258.06
6/1/24	99	8,258.06		8,258.06
9/1/24	100	8,258.06		8,258.06
12/1/24	101	8,258.06		8,258.06
3/1/25	102	8,258.06		8,258.06
6/1/25	103	8,258.06		8,258.06
9/1/25	104	8,258.06		8,258.06
12/1/25	105	8,258.06		8,258.06
3/1/26	106	8,258.06		8,258.06
6/1/26	107	8,258.06		8,258.06
9/1/26	108	8,258.06		8,258.06
12/1/26	109	8,258.06		8,258.06
3/1/27	110	8,258.06		8,258.06
6/1/27	111	8,258.06		8,258.06
9/1/27	112	8,258.06		8,258.06
12/1/27	113	8,258.06		8,258.06
3/1/28	114	8,258.06		8,258.06
6/1/28	115	8,258.06		8,258.06
9/1/28	116	8,258.06		8,258.06
12/1/28	117	8,258.06		8,258.06
3/1/29	118	8,258.06		8,258.06
6/1/29	119	8,258.06		8,258.06
9/1/29	120	8,258.06		8,258.06
12/1/29	121	8,258.06		8,258.06
3/1/30	122	8,258.06		8,258.06
6/1/30	123	8,258.06		8,258.06
9/1/30	124	8,258.06		8,258.06
12/1/30	125	8,258.06		8,258.06
3/1/31	126	8,258.06		8,258.06
6/1/31	127	8,258.06		8,258.06
9/1/31	128	8,258.06		8,258.06
12/1/31	129	8,258.06		8,258.06
3/1/32	130	8,258.06		8,258.06
6/1/32	131	8,258.06		8,258.06
9/1/32	132	8,258.06		8,258.06
12/1/32	133	8,258.06		8,258.06
3/1/33	134	8,258.06		8,258.06
6/1/33	135	8,258.06		8,258.06
9/1/33	136	8,258.06		8,258.06

**Schedule Y**  
**Quarterly Debt Service Schedule**

Date	#	Principal	Interest	Total
12/1/33	137	8,258.06		8,258.06
3/1/34	138	8,258.06		8,258.06
6/1/34	139	8,258.06		8,258.06
9/1/34	140	8,258.06		8,258.06
12/1/34	141	8,258.06		8,258.06
3/1/35	142	8,258.06		8,258.06
6/1/35	143	8,258.06		8,258.06
9/1/35	144	8,258.06		8,258.06
12/1/35	145	8,258.06		8,258.06
3/1/36	146	8,258.06		8,258.06
6/1/36	147	8,258.06		8,258.06
9/1/36	148	8,258.06		8,258.06
12/1/36	149	8,258.06		8,258.06
3/1/37	150	8,258.06		8,258.06
6/1/37	151	8,258.06		8,258.06
9/1/37	152	8,258.06		8,258.06
12/1/37	153	8,258.06		8,258.06
3/1/38	154	8,258.06		8,258.06
6/1/38	155	8,258.76		8,258.76
		1,280,000.00		1,280,000.00



\$1,280,000  
BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

GENERAL CERTIFICATE

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. INCUMBENCY AND OFFICIAL NAME
7. LOAN AGREEMENT
8. PUBLIC SERVICE COMMISSION ORDER; RATES
9. MEETINGS
10. INSURANCE
11. LAND AND RIGHTS OF WAY
12. TRUTH AND ACCURACY
13. SPECIMEN BOND
14. BOND PROCEEDS
15. PRIVATE USE OF FACILITIES
16. NO FEDERAL GUARANTY
17. CONFLICT OF INTEREST
18. CLEAN WATER ACT
19. COUNTERPARTS

We, the undersigned ACTING CHAIRMAN and the undersigned SECRETARY of BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT, Lincoln County, West Virginia (the "District"), and the undersigned ATTORNEY for said District, hereby certify in connection with the Branchland/Midkiff Public Service District, Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), in the aggregate principal amount of \$1,280,000, numbered R-1, dated the date hereof (the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as in the Resolution adopted by the Public Service Board (the "Board") on July 22, 1998 (the "Resolution"), and the Loan Agreement (the "Loan Agreement") entered into between the District and the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated July 29, 1998.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Bonds; nor questioning the proceedings and authority by which the Board authorized the issuance and sale of the Bonds; nor affecting the validity of the Bonds or any provisions made or

authorized for the payment thereof, including, but not limited to the pledge of Net Revenues of the System for such payment; nor questioning the existence of the District or the title of the members or officers of the District or the Public Service Board to their respective offices; nor questioning the acquisition and construction of water system facilities of the District (the "System"), a portion of which is being financed out of the proceeds of sale of the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals and certificates required by law for the acquisition and construction of the Project and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, including approval by the Public Service Commission of West Virginia. Competitive bids for construction of the Project will be solicited in accordance with West Virginia law.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the District or the System since the approval, execution and delivery by the District of the Loan Agreement between the Authority and the District. There has been no adverse change in the financial condition of the District or the System since the approval by the Authority and the Council of a loan to assist in the acquisition and construction of the Project. There are no other outstanding obligations of the Issuer which will rank on a parity with the Bonds as to pledge and source of and security for payment, except for the \$180,000 Branchland-Midkiff Public Service District, Water-Works System Revenue Bond, Series A (1966). The District has received consent from the holder of the Series A (1966) Bonds authorizing its issuance of the Bonds on a parity basis. There are no other outstanding bonds or other obligations of the Issuer which will rank senior and prior to or on a parity with the Bonds as to liens, pledge and source of and security for payment.

5. **SIGNATURES:** The undersigned CHAIRMAN and SECRETARY are the duly elected, qualified and serving officers as indicated by the official titles opposite their signatures below, are duly authorized to execute and seal the Bond for the District, and on the date hereof have signed and sealed the Bond for the District. The seal appearing hereon and on the Bond is the only official seal of the District.

6. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the District is "Branchland/Midkiff Public Service District", and it is a public service district, public corporation and political subdivision duly created under the laws of the State of West Virginia in Lincoln County of said State. The governing body of the District is the Chairman, Secretary and its Board consisting of three (3) Board Members, whose names, terms and offices are as follows:

<u>Name</u>	<u>Date of Termination of Office</u>	<u>Office</u>
Harold R. Smith	December 31, 1998	Chairman and Member
Ronald D. Lucas	December 31, 1999	Acting Chairman, Treasurer and Member
Alfred Abshire, Jr.	December 31, 1999	Member

The duly appointed and acting Attorney for the District is Hanna & Bonham, South Charleston, West Virginia.

7. **LOAN AGREEMENT:** As of the date hereof, (i) representations of the District contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof, (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the District has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which is necessary to be disclosed therein in order to make the statements and information contained therein not misleading; and (iv) the District ratifies and reaffirms all the covenants made in the Loan Agreement as if they were specifically set forth herein.

8. **PUBLIC SERVICE COMMISSION ORDER; RATES:** The undersigned Attorney hereby covenants that he has filed any information with the PSC and taken any other actions required to maintain the PSC Recommended Decision entered on April 24, 1998, and the Commission Order Reopening Proceeding and Granting Petition dated July 24, 1998, in Case No. 97-0964-PWD-CN, in full force and effect, with the time for rehearing and appeal having expired or been waived. The rates were enacted by resolution adopted July 22, 1998, and the Issuer has complied with all requirements of the PSC to make the rates valid and effective, and such rates are in full force and effect.

9. **MEETINGS:** All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the District in any way connected with the acquisition and construction and financing of the Project were authorized or adopted at meetings of the Board duly called and held pursuant to all applicable statutes and the customary procedure of the Board, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

10. **INSURANCE:** The District will maintain or, as appropriate, will require all contractors to maintain Workers' Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Loan Agreement and the Resolution.

11. **LAND AND RIGHTS OF WAY:** All land in fee simple and all rights of way and easements necessary for the construction, operation and maintenance of the System have been acquired or can and will be acquired by purchase, or if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bond.

12. **TRUTH AND ACCURACY:** As of the date hereof, Harold R. Smith, Chairman, and Doris McCoy, Secretary, hereby certify that the copies of documents previously or on the date hereof certified by them as being true and accurate are true and accurate as of the date hereof and that none of such documents have been repealed, rescinded, amended or otherwise modified.

13. **SPECIMEN BOND:** Attached hereto as Exhibit A is a specimen of the Bond which, except as to execution and authentication, is identical in all respects with such Bond this day delivered to the Authority and being substantially in the form prescribed in the Resolution.

14. **BOND PROCEEDS:** On the date hereof, the Issuer received \$158,296.00 from the Authority and the Council, being more than a de minimus portion of the principal amount of the Bond.

15. **PRIVATE USE OF FACILITIES:** The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bond and the interest thereon. Less than ten percent (10%) of the proceeds of the Bond will be used, directly or indirectly, for any private business use, and less than ten percent (10%) of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bond will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bond, including the disproportionate related business use of the proceeds of the Bond, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bond. None of the proceeds of the issue of the Bond will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

16. **NO FEDERAL GUARANTY:** The Bond is not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

17. **CONFLICT OF INTEREST:** No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract

without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than five percent (5%) of the particular business enterprise or contract.

18. CLEAN WATER ACT: To the extent applicable, the project as described in the Resolution will comply with Sections 208 and 303(e) of the Clean Water Act.

19. COUNTERPARTS: This Certificate may be executed in counterpart, and such parts shall be deemed to be the Certificate.

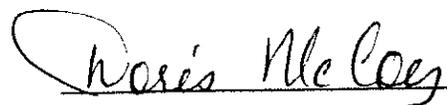
WITNESS our signatures and the official seal of the Branchland/Midkiff Public Service District on the 29th day of July, 1998.

SIGNATURE

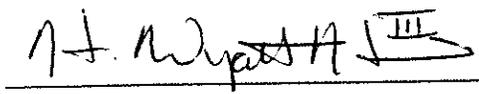
OFFICIAL TITLE

  
\_\_\_\_\_

Acting Chairman

  
\_\_\_\_\_

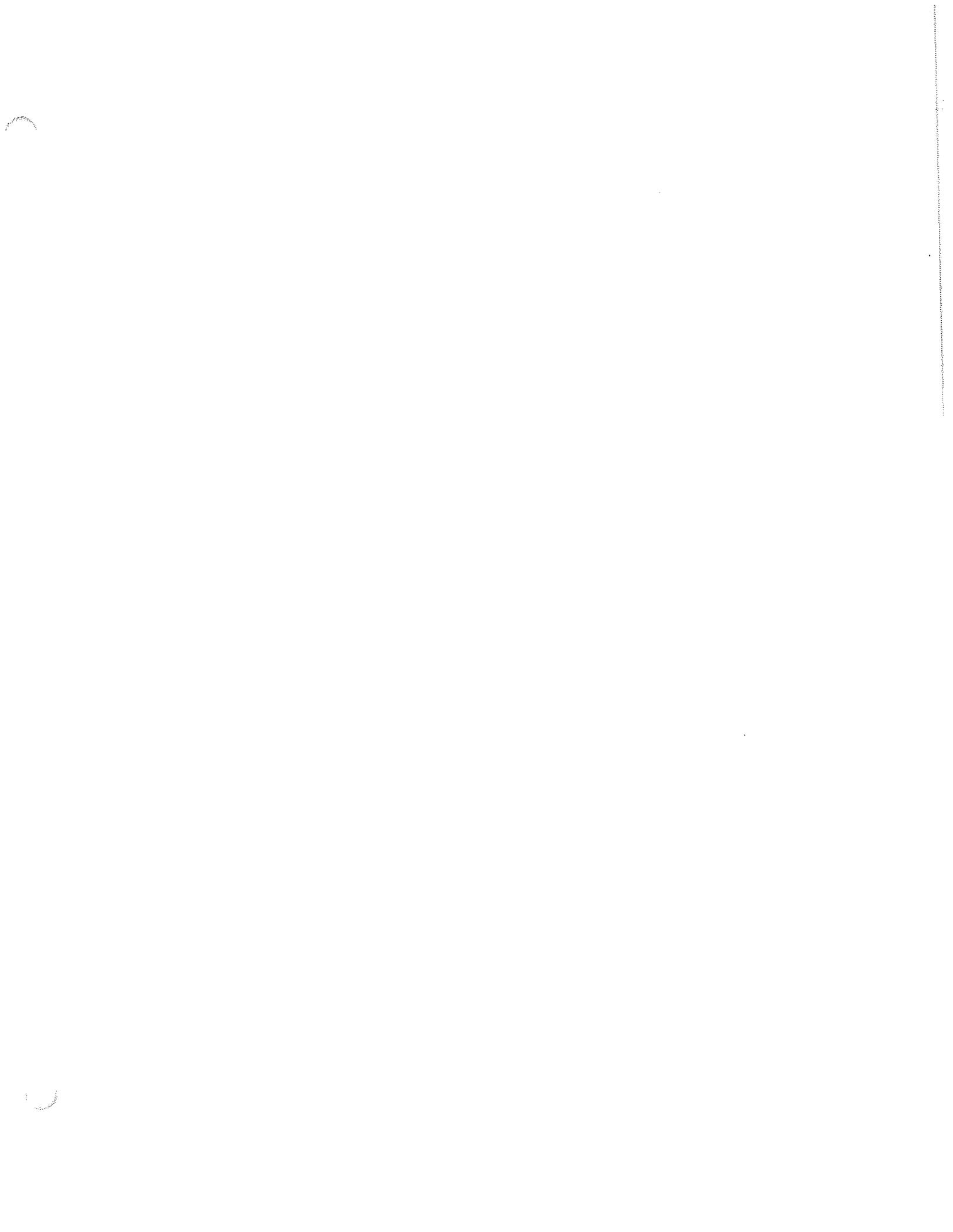
Secretary

  
\_\_\_\_\_

Attorney

Exhibit A

(Specimen Bond-See Tab 31)



\$1,280,000  
BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

CERTIFICATE OF CONSULTING ENGINEER

I, Jonathan M. Fowler, Registered Professional Engineer, West Virginia License No. 8945 of HAWORTH, MEYER & BOLEYN, INC., South Charleston, West Virginia, hereby certify that my firm is engineer for the acquisition and construction of certain additions, betterments and improvements to the water system (herein called the "Project") of the Branchland/Midkiff Public Service District (the "Issuer"), located in Lincoln County, West Virginia, a portion of which cost is being financed by the above-captioned bond (the "Bond") of the Issuer. Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Bond Resolution adopted by the Public Service Board of the Issuer on July 22, 1998 (the "Resolution"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Infrastructure & Jobs Development Council (the "Council") dated July 29, 1998.

1. The Bond is being issued for the purpose of financing a portion of the costs of the Project.
  
2. The undersigned hereby certifies that to the best of his knowledge after due inquiry (i) the Project will be constructed based upon approved plans, specifications and designs which have been prepared by my firm as described in and in accordance with the application submitted to the Authority requesting the Authority to purchase the Bond (the "Application") and which have been or will be approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it will be constructed and will have an estimated useful life of at least forty (40) years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the chosen bidder received any and all addenda to the original bid documents, (v) the bid documents reflect the Project as approved by the West Virginia Bureau for Public Health, (vi) the chosen bid includes every construction item necessary to complete the Project, or explains any deviation thereof, (vii) the uniform bid procedures were followed, (viii) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (ix) the rates and charges for the System as adopted by the Public Service Board of the Issuer are or will be sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (x) the net proceeds of the Bond, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grant irrevocably committed therefor, are or will be sufficient to pay the costs of construction of the Project as set forth in the Application, and (xi) attached hereto as Exhibit B is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 29th day of July, 1998.

HAWORTH, MEYER & BOLEYN, INC.

By: 

Regional Manager

West Virginia License No. 8945



[SEAL]

**WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**

**SCHEDULE B**

Branchland-Midkiff Public Service District  
Water System Extension Project 97W-298

FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

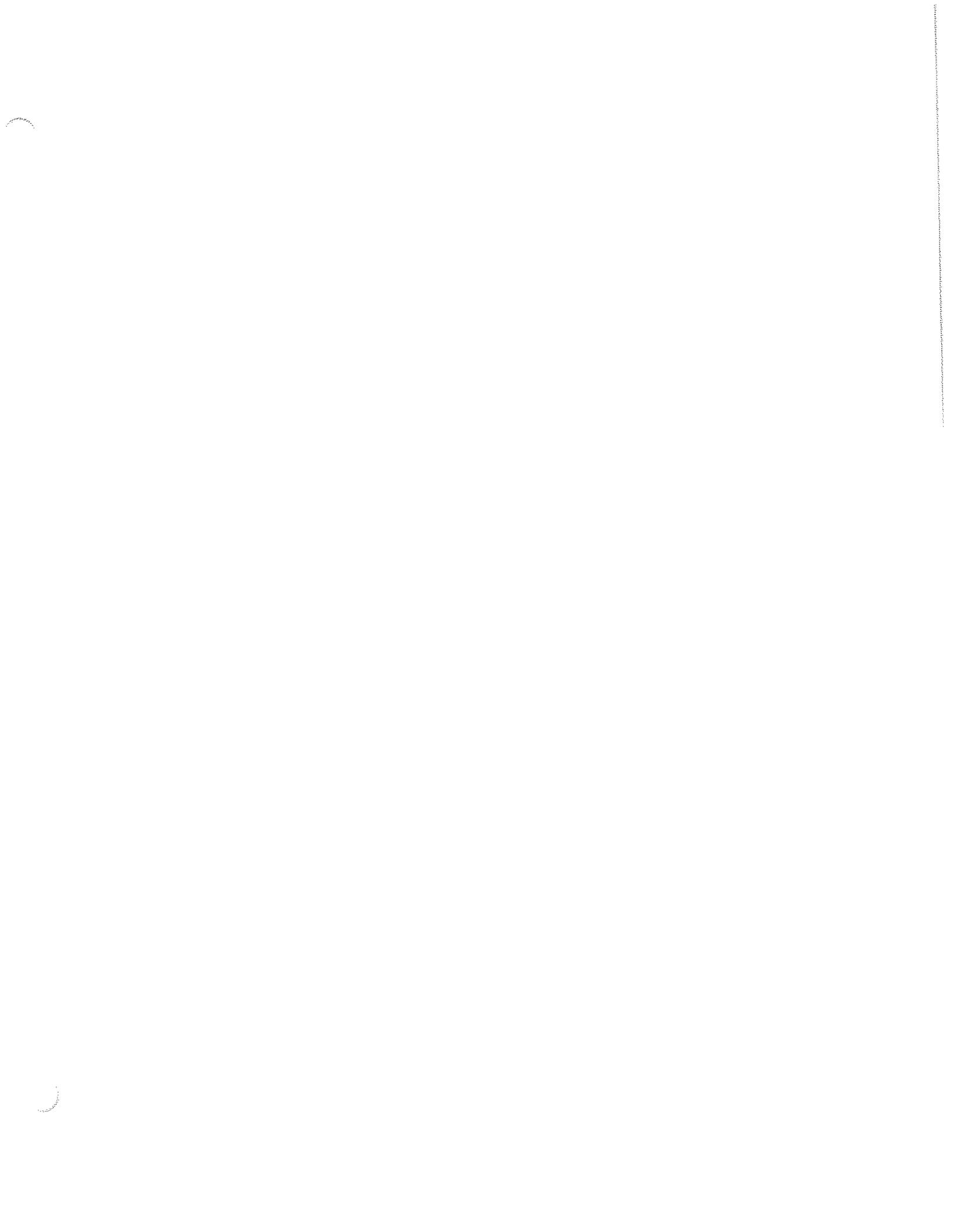
A. Cost of Project	Total
1. Construction (Based on Actual Bids)	2,065,925.00
2. Technical Services	
a. Preliminary Engineering	1,500.00
b. Design	129,981.16
c. Special Services	15,000.00
d. Inspection	95,424.29
3. Legal & Fiscal	
a. Legal	15,000.00
b. Fiscal	5,000.00
4. Administrative	35,000.00
5. Sites and Other Lands	7,500.00
6. Other Costs	
a. Legal Advertisement	2,325.27
b. Permits	885.00
7. Interim Financing Costs	
8. Contingency	170,459.28
9. Total of Lines 1 through 8	2,544,000.00
<b>B. Sources of Funds</b>	
10. Federal Grants:	
11. State Grants:	
12. Other Grants:	
13. Any Other Source:	
14. Infrastructure Fund Grant	1,280,000.00
15. Total of Lines 10 through 14	1,280,000.00
16. Net Proceeds Required from Bond Issue (Line 9 minus Line 15)	1,280,000.00
<b>C. Cost of Financing</b>	
17. Funded Reserve Account	
18. Other Costs	250.00
a. Bond Counsel	15,750.00
19. Total Cost of Financing (Lines 17 and 18)	16,000.00
20. Size of Bond Issue (Line 16 plus Line 19)	1,280,000.00

\_\_\_\_\_  
GOVERNMENTAL AGENCY

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONSULTING ENGINEER

DATE: \_\_\_\_\_



Mark A. Bowen  
CERTIFIED PUBLIC ACCOUNTANT  
19 3RD STREET  
P.O. BOX 415  
HAMLIN, WEST VIRGINIA 25523  
PHONE: (304) 824-3880

Branchland-Midkiff Public Service District  
Route 2 Box 496  
Branchland, West Virginia 25506

West Virginia Infrastructure and Jobs  
Development Council  
980 One Valley Square  
Charleston, West Virginia 25301

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571

Re: \$1,280,000. Branchland-Midkiff Public Service District Water Revenue Bonds, Series  
1998

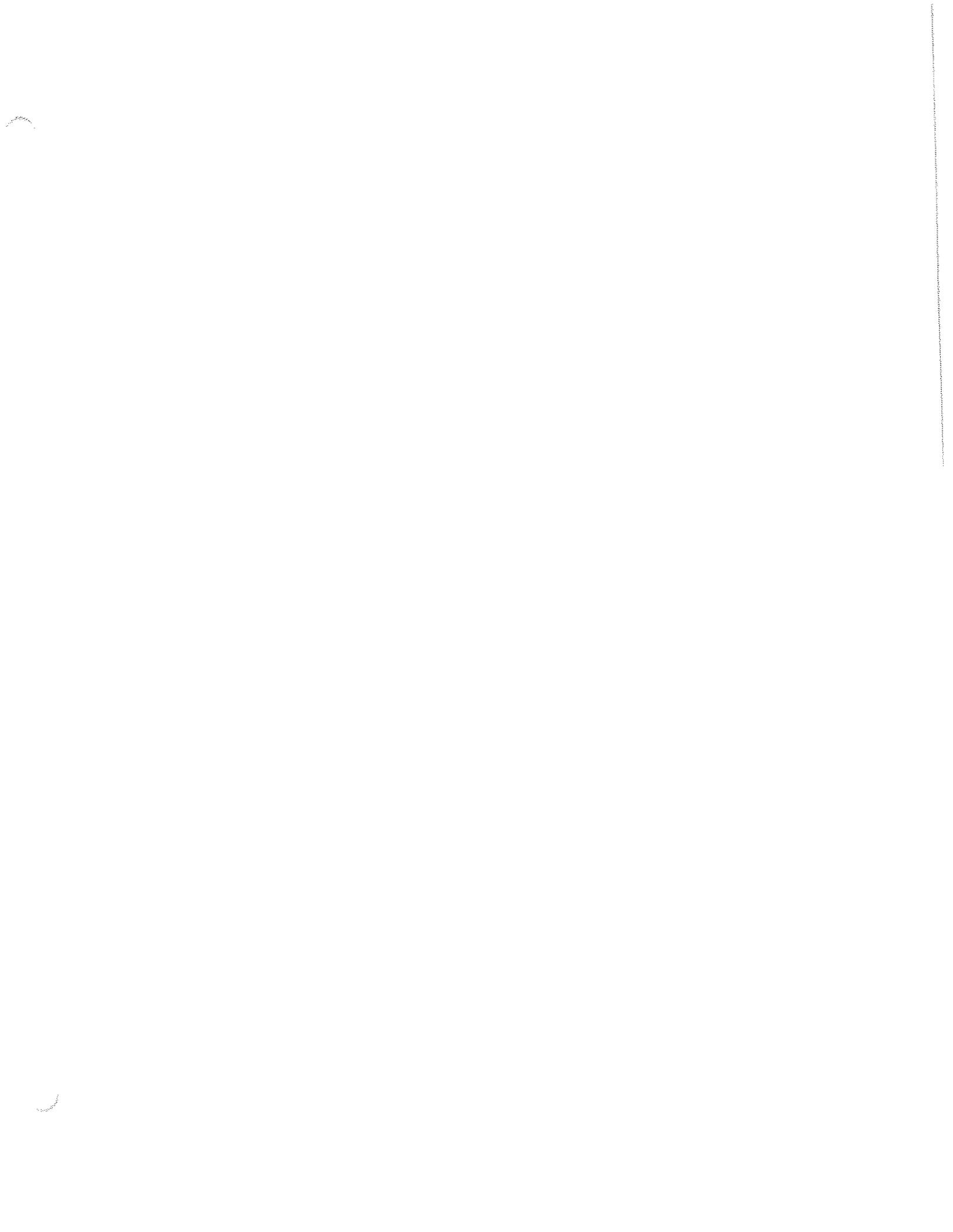
Gentlemen:

I, Mark A. Bowen, a Certified Public Accountant, License No. 1286, Hamlin, West Virginia, have reviewed the water service rates which were enacted by the Branchland-Midkiff Public Service District (the "District"), pursuant to a Rate Resolution authorized by the Public Service Commission of West Virginia. It is my opinion that the schedule of rates set forth in the Rate Resolution are adequate to pay operation and maintenance expenses of the System, as defined in the Bond Resolution, hereinafter described, to pay the principal of and interest, if any, on the 1998 Bonds and the Prior Bonds, as defined in the Bond Resolution, and to meet the one hundred fifteen percent (115%) debt service coverage requirement of the 1998 Bonds and the Prior Bonds, as defined in the Bond Resolution enacted and adopted by the Public Service Board of the District and effective on July 22, 1998, and are sufficient to comply with the provisions of the Loan Agreement entered into between the District and the West Virginia Water Development Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council dated July 29, 1998.

WITNESS my signature as of this 29th day of July, 1998.



Mark A. Bowen,  
Certified Public Accountant



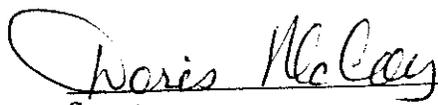
\$1,280,000  
BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE OF SECRETARY AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

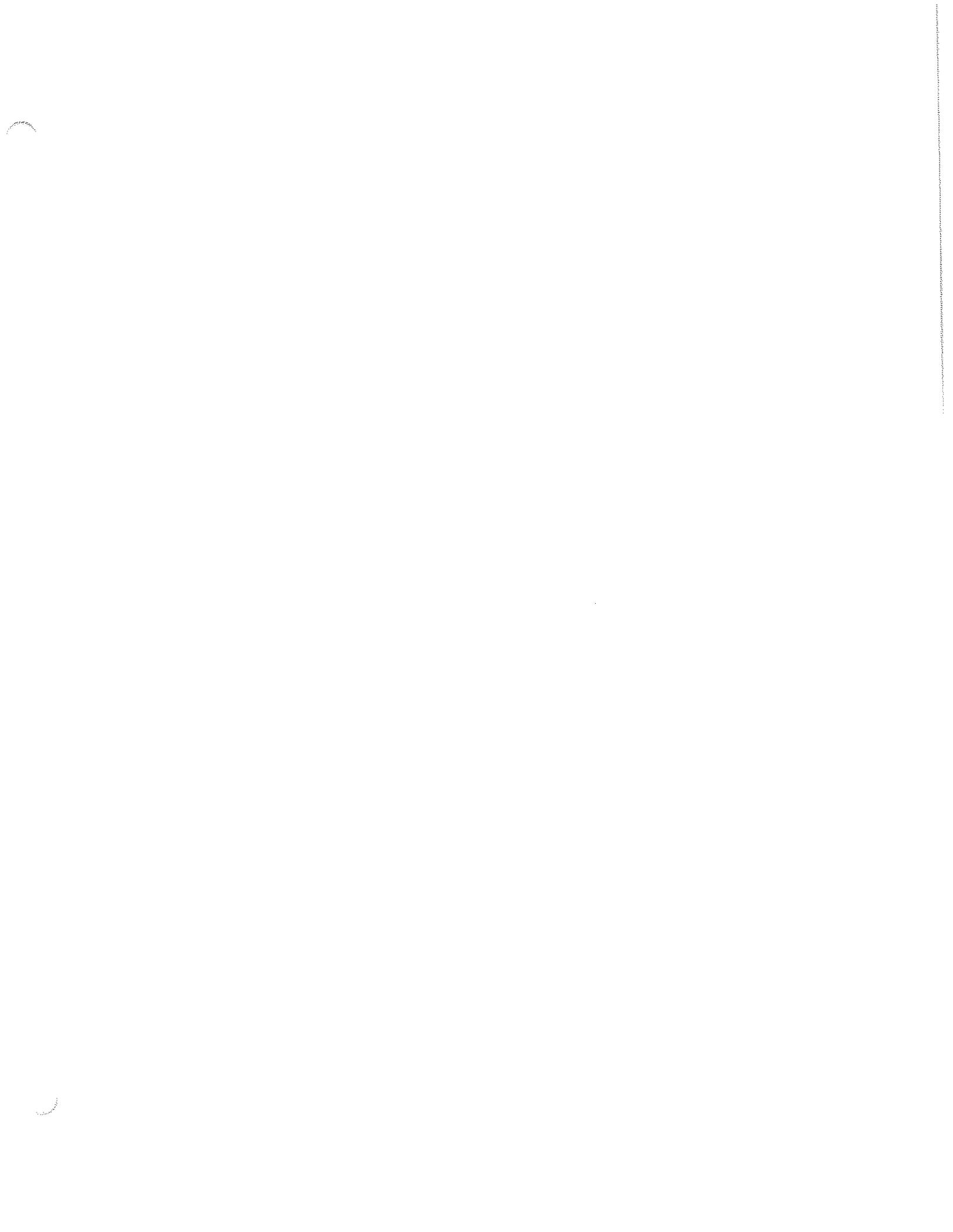
I, Doris McCoy, the duly elected Secretary of the Branchland/Midkiff Public Service District (the "District"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the \$1,280,000 Branchland/Midkiff Public Service District, Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund) (the "Bonds"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the District and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Order Creating the District.
2. Oaths of Office of the Chairman, Secretary and Members of the Public Service Board (the "Board").
3. Bond Resolution (the "Resolution") adopted on July 22, 1998.
4. Minutes of the July 22, 1998 meeting of the Board wherein the Resolution was considered and approved.
5. Affidavit of publication of the abstract and notice of meeting on the Resolution published in The Lincoln Journal.
6. Loan Agreement dated July 29, 1998.
7. Recommended Decision of the Public Service Commission of West Virginia entered on April 24, 1998, in Case No. 97-0964-PWD-CN.
8. Commission Order Reopening Proceeding and Granting Petition of the Public Service Commission of West Virginia dated July 24, 1998.
9. Commitment Letter from the West Virginia Infrastructure and Jobs Development Council dated May 12, 1997, and Approval Leter dated April 7, 1997.
10. Rate Resolution adopted on July 22, 1998.

WITNESS my signature and the official seal of the Branchland/Midkiff Public Service District  
as of the 29th day of July, 1998.

  
Secretary

(SEAL)



## REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 29th day of July, 1998, by and between BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision duly created under the laws of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, at its office located in Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,280,000 aggregate principal amount of Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), in fully registered form (the "Bonds"), pursuant to a Resolution enacted and adopted by the Issuer and effective on July 22, 1998 (the "Resolution");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Resolution, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Resolution provides for the appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Resolution and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Resolution and to take certain other actions hereinafter set forth.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of the Paying Agent and Registrar, all as set forth in the Resolution, such duties including, among other things, the duties to authenticate, register and deliver the Notes upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Paying Agent and Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time, reasonable compensation for services rendered and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement the provisions of the Resolution with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Resolution, the terms of the Resolution shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Resolution will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon sixty (60) days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Branchland/Midkiff Public Service District  
Attention: Chairman  
Rt. 2, Box 496  
Branchland, WV 25506

REGISTRAR: One Valley Bank, National Association  
Attention: Charlotte Morgan  
P.O. Box 1793  
Charleston, WV 25326

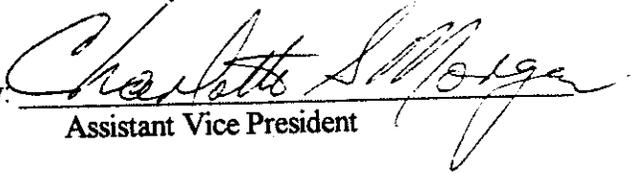
8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Resolution and instructions provided by the Issuer and the Purchaser thereof.

IN WITNESS WHEREOF, BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT and ONE VALLEY BANK, NATIONAL ASSOCIATION have caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day, month and year first above-written.

BRANCH AND MIDKIFF PUBLIC SERVICE DISTRICT

By:   
Acting Chairman

ONE VALLEY BANK, NATIONAL ASSOCIATION

By:   
Assistant Vice President

See Resolution (Tab No. 6)

SIGNATURE RESOLUTION

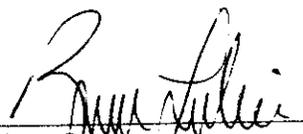
I, BRUCE C. LECKIE, Assistant Secretary of One Valley Bank, National Association, Charleston, West Virginia, do hereby certify that in accordance with action taken by the Board of Directors at a regular meeting duly called and held on April 15, 1997, at which a quorum was present and voting, the following resolution was adopted and is still in full force and effect and has not been rescinded or modified and it is consistent with the Bylaws of the Bank:

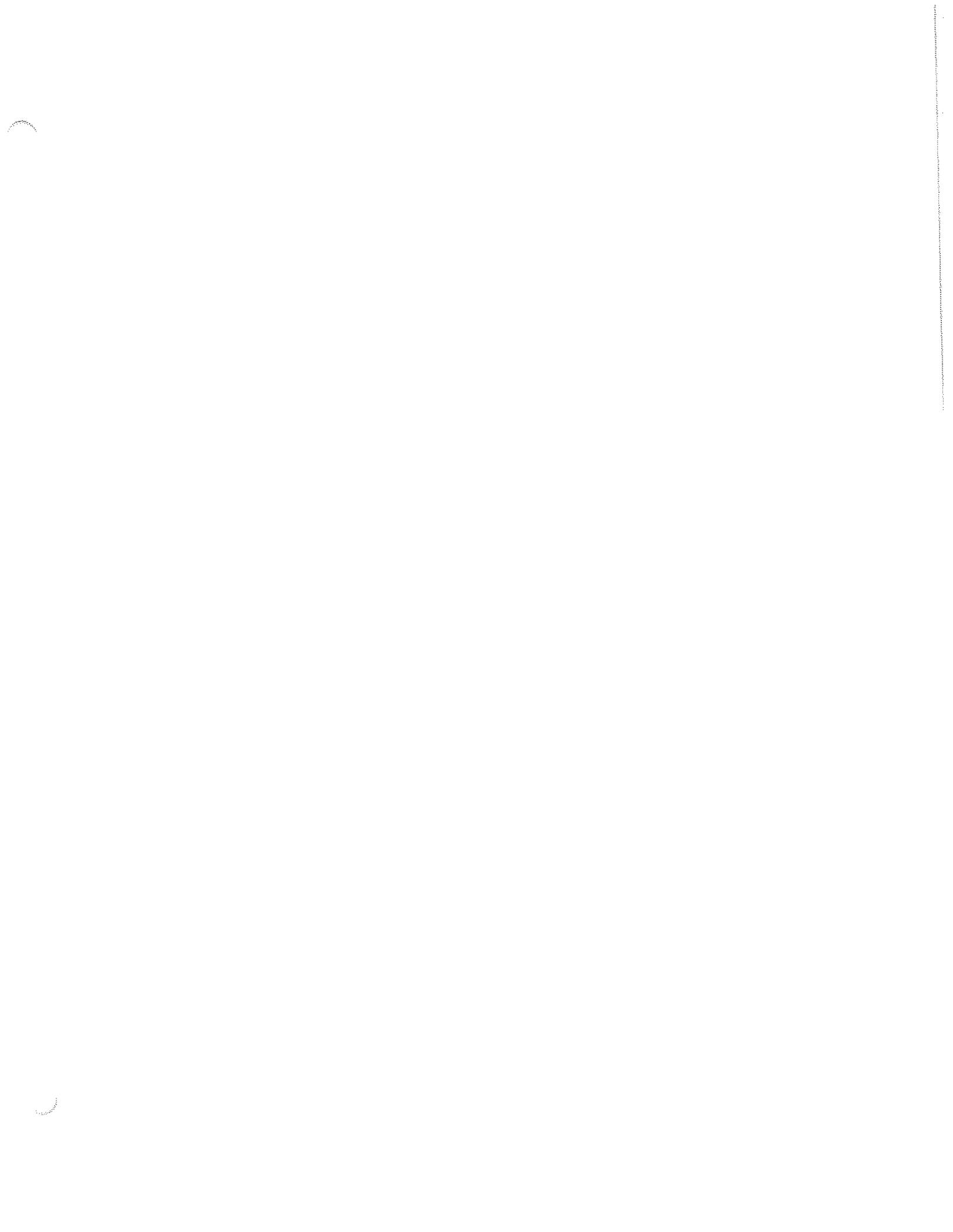
BE IT RESOLVED THAT,

J. Holmes Morrison, Chairman  
Phyllis H. Arnold, President and Chief Executive Officer  
Harold R. Baughman, Senior Vice President  
Frederick H. Belden, Jr., Executive Vice President and Assistant Secretary  
John P. Beckett, Jr., Vice President  
Stafford W. Burroughs, Assistant Vice President  
Gail Pitchford Cochran, Assistant Vice President  
Laura D. Ellis, Trust Administrative Officer  
Carolyn Fisher, Personal Trust Officer  
Joseph A. Freedman, Vice President and Trust Legal Counsel  
Barry Griffith, Personal Trust Officer  
Stephen S. Grove, Senior Personal Trust Officer (Martinsburg)  
Kathleen Hamrick, Benefit Plans Officer  
Diane L. Hinzman, Assistant Vice President and Assistant Secretary  
Gene Holt, Benefit Plans Officer  
Patricia H. Howe, Vice President  
D. Kevin Jackson, Executive Banker  
John Jividen, Investment Products Manager  
Stanley R. Johnson, Portfolio Services Officer  
Roger W. Kerr, Assistant Vice President  
Martin L. Keesecker, Personal Trust Officer  
Frances Klink, Assistant Vice President (Morgantown)  
Timothy W. Krisher, Financial Services Executive  
Bruce C. Leckie, Vice President and Assistant Secretary  
Charlotte S. Morgan, Assistant Vice President and Assistant Secretary  
Harold E. Neely, Jr., Senior Vice President, Executive Trust Officer and Assistant Secretary  
David P. Nolan, Vice President  
K. Madison Sayre, Financial Services Executive  
Mary Ann Schacht, Benefit Plans Officer  
Susan Short, Personal Trust Officer  
Charles N. Slack, Jr., Vice President  
Michael W. Stajduhar, Senior Vice President and Assistant Secretary  
Vicki Stanek, Financial Services Executive  
Rhonda Surbaugh, SPAN Administrative Officer  
James R. Thomas, III, Vice President  
Frederic H. Tipper, Portfolio Manager  
John Randy Valentine, Senior Vice President  
Jennifer Ware, Personal Trust Officer  
Rena R. Williams, Assistant Vice President  
John F. Ziebold, Senior Vice President and Assistant Secretary

are severally authorized and empowered to sign, execute, acknowledge, verify, deliver or accept such instruments as may be required for the performance of their duties including authority to sell, assign and transfer common stock, preferred stock, registered bonds and unregistered bonds of the United States of America, or of any state, foreign government, county, city municipality or corporation which may be held by this Bank as executor, administrator, guardian, trustee, or in any fiduciary capacity whatsoever, or any and all of such stocks or bonds which this Bank is or shall be authorized and empowered to sell, assign and transfer as attorney or other representative for the owners thereof.

IN Witness WHEREOF, I have hereunto affixed my hand and the seal of One Valley Bank, National Association, this 23rd  
day of July, 1998.

  
Assistant Secretary  
One Valley Bank, National Association



\$1,280,000  
BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

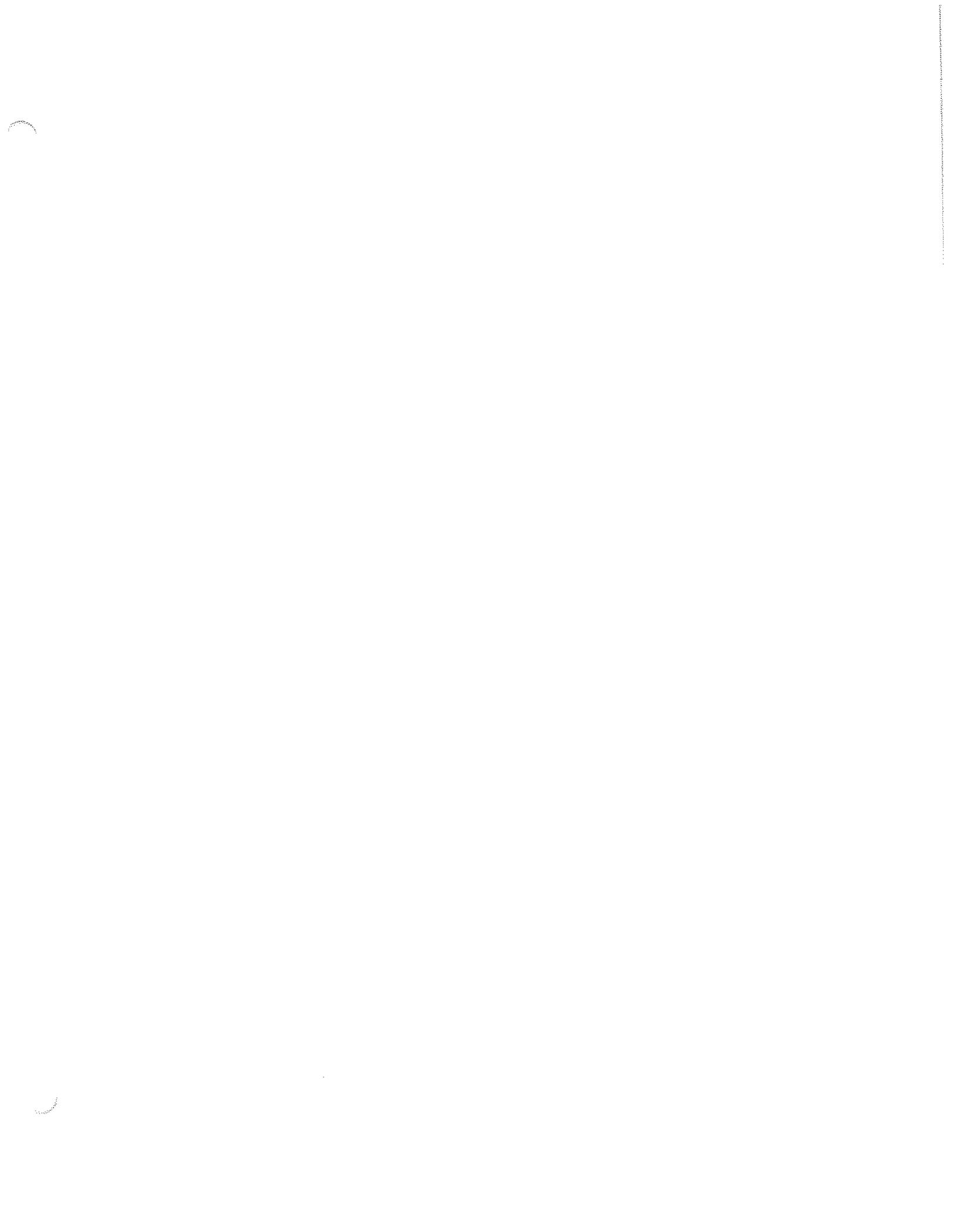
ACCEPTANCE OF DUTIES OF DEPOSITORY BANK

The Twentieth Street Bank, at its office located in West Hamlin, Lincoln County, West Virginia, hereby accepts appointment as Depository Bank in connection with a Resolution of Branchland/Midkiff Public Service District (the "District") duly enacted and adopted by the Public Service Board of the District (the "Board") and effective on July 22, 1998 (the "Resolution"), authorizing issuance of Branchland/Midkiff Public Service District Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), dated July 29, 1998, in the aggregate principal amount of \$1,280,000, and agrees to perform all duties of Depository Bank as set forth in the Resolution.

Witness my signature as of the 29th day of July, 1998.

THE TWENTIETH STREET BANK

By: *Alma Riplett*  
Its: *V.P.*



\$1,280,000  
BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

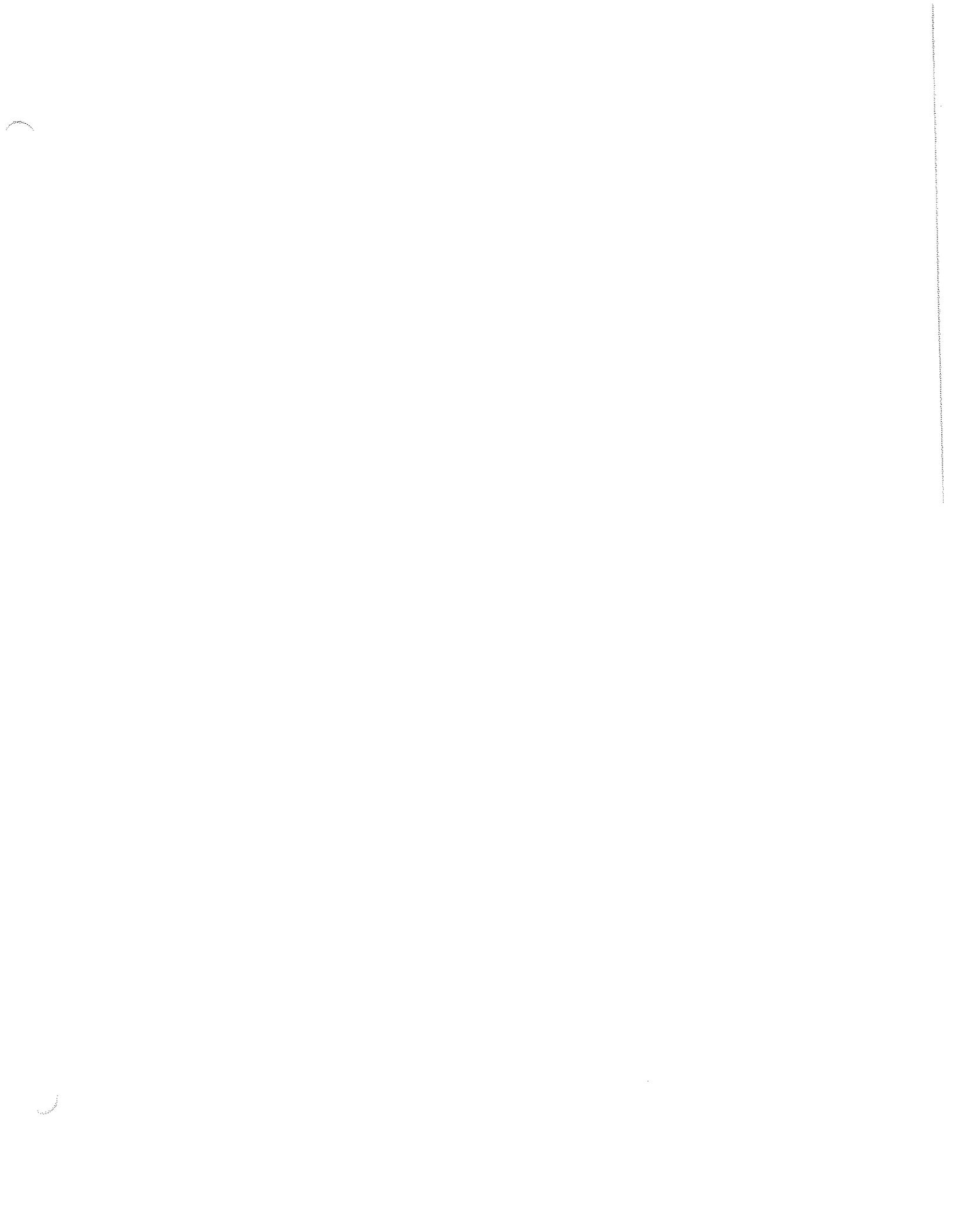
ACCEPTANCE OF DUTIES OF REGISTRAR

One Valley Bank, National Association, at its office located in Charleston, Kanawha County, West Virginia, hereby accepts appointment as Registrar in connection with a Resolution of Branchland/Midkiff Public Service District (the "District") duly enacted and adopted by the Public Service Board of the District (the "Board") and effective on July 22, 1998 (the "Resolution"), authorizing issuance of Branchland/Midkiff Public Service District Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), dated July 29, 1998, in the aggregate principal amount of \$1,280,000, and agrees to perform all duties of Registrar as set forth in the Resolution.

Witness my signature as of the 29th day of July, 1998.

ONE VALLEY BANK, NATIONAL ASSOCIATION

By: Charlotta S. Morgan  
Assistant Vice President



REQUEST AND AUTHORIZATION AS TO AUTHENTICATION  
AND DELIVER OF THE BOND

July 29, 1998

One Valley Bank, National Association  
P.O. Box 1793  
Charleston, WV 25326

Ladies and Gentlemen:

We herewith hand to you, duly executed, \$1,280,000 Branchland/Midkiff Public Service District, Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), in the form of a single Bond, numbered R-1 (the "Bond") of the Branchland/Midkiff Public Service District (the "District"), authorized to be issued under and pursuant to the Resolution, duly adopted by the Board of the District on July 22, 1998.

You are hereby requested and authorized to authenticate and register the Bond and to deliver the Bond on behalf of the District to the West Virginia Water Development Authority, the original purchaser thereof, upon receipt by the District of \$158,296.00, being more than a de minimus portion of the proceeds of the Bond.

Branchland/Midkiff Public Service District

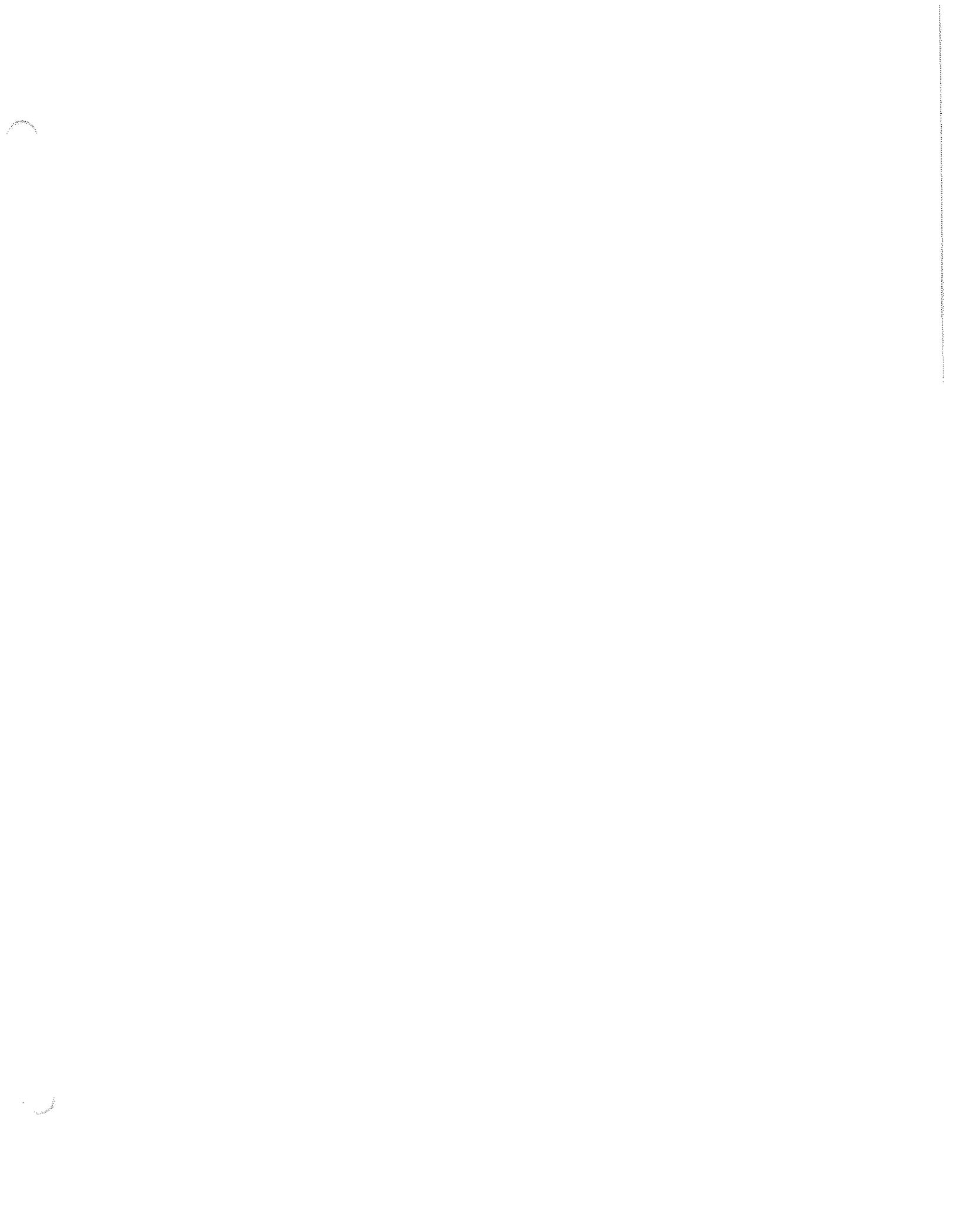
By: 

Acting Chairman

(SEAL)

Attest:

  
Secretary



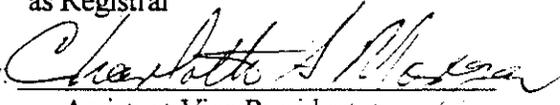
\$1,280,000  
BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

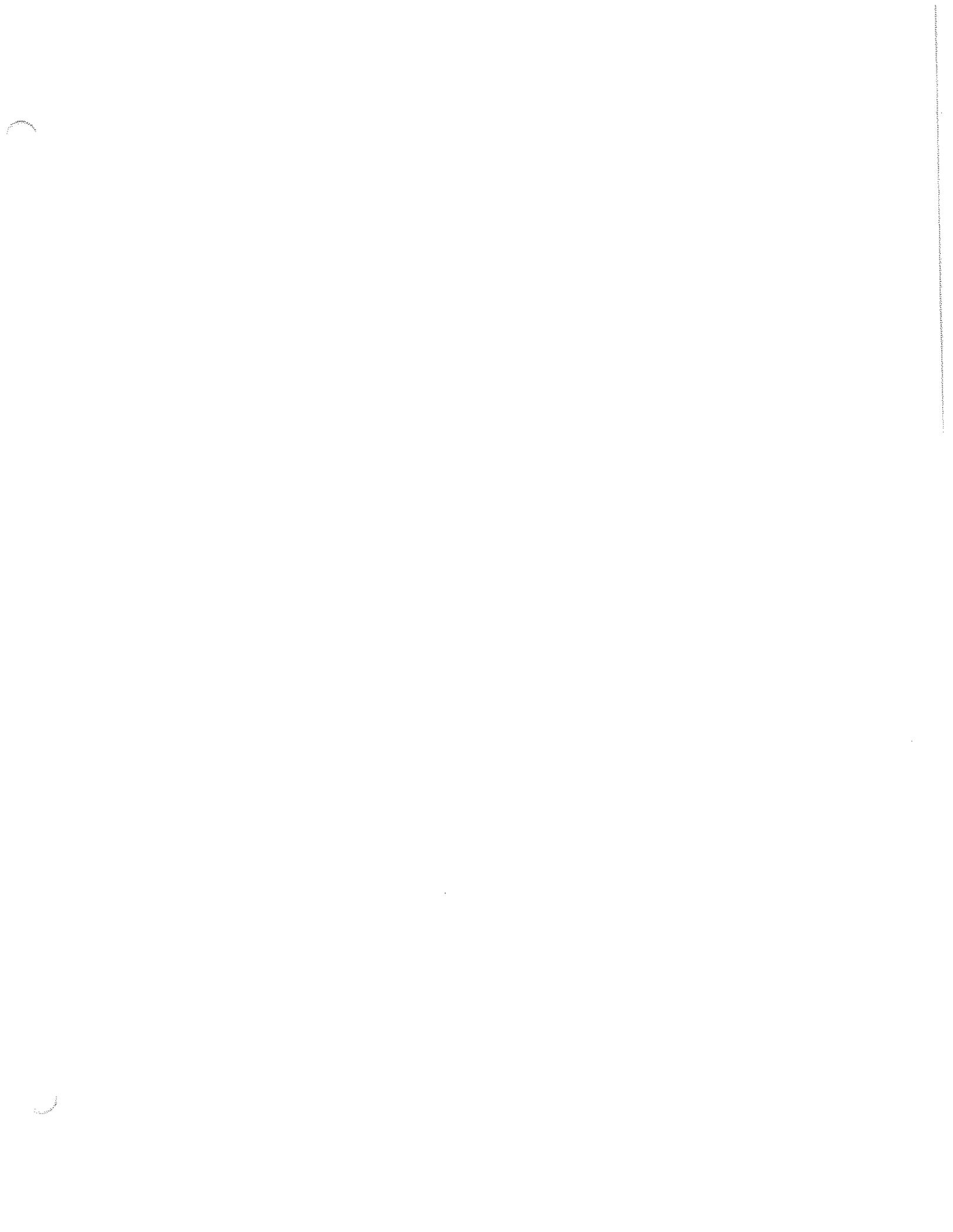
CERTIFICATE OF REGISTRATION OF BOND

I, Charlotte Morgan, as Assistant Vice President, of One Valley Bank, National Association, as Registrar (the "Registrar"), under a Registrar's Agreement between the Registrar and the Branchland/Midkiff Public Service District (the "District") dated as of the date hereof, hereby certify that on the 29th day of July, 1998, the Bond of the District in the principal amount of \$1,280,000 designated "Branchland/Midkiff Public Service District, Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund)", and numbered R-1, dated as of the date hereof, was registered as to principal and interest in the name of "The West Virginia Water Development Authority" on the books of the Registrar kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature as of the 29th day of July, 1998.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By   
Assistant Vice President



\$1,280,000  
BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned Daniel B. Yonkosky, Director of the West Virginia Water Development Authority (the "WDA"), acting on behalf of the West Virginia Infrastructure and Jobs Development Council, and Ronald D. Lucas, Acting Chairman of the Branchland/Midkiff Public Service District, Lincoln County, West Virginia (the "Issuer"), hereby certify as follows:

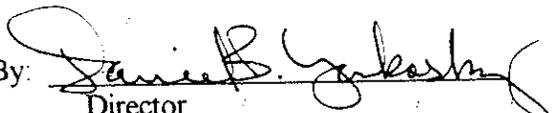
1. On the 29th day of July, 1998, the WDA received the entire original issue in aggregate principal amount of \$1,280,000 of the Water Revenue Bonds, Series 1998 (West Virginia Infrastructure Fund), of the Issuer (the "Bonds"). The Bond, as so received on original issuance, is dated July 29, 1998, and is issued as Bond Number R-1 in the denomination of \$1,280,000.

2. At the time of receipt of the Bond, the Bond had been executed by Ronald D. Lucas, as Acting Chairman of the Issuer, by his manual signature, and by Doris McCoy, as Secretary of the Issuer, by her manual signature, and the official seal of the Issuer had been imprinted upon the Bond.

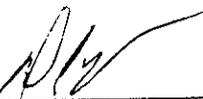
3. The Issuer has received and hereby acknowledges receipt from the WDA, as the original purchaser of the Bond, of \$158,296.00, being more than a de minimus portion of the proceeds of the Bonds. The balance will be advanced from time to time to pay costs of the Project as described in the Loan Agreement.

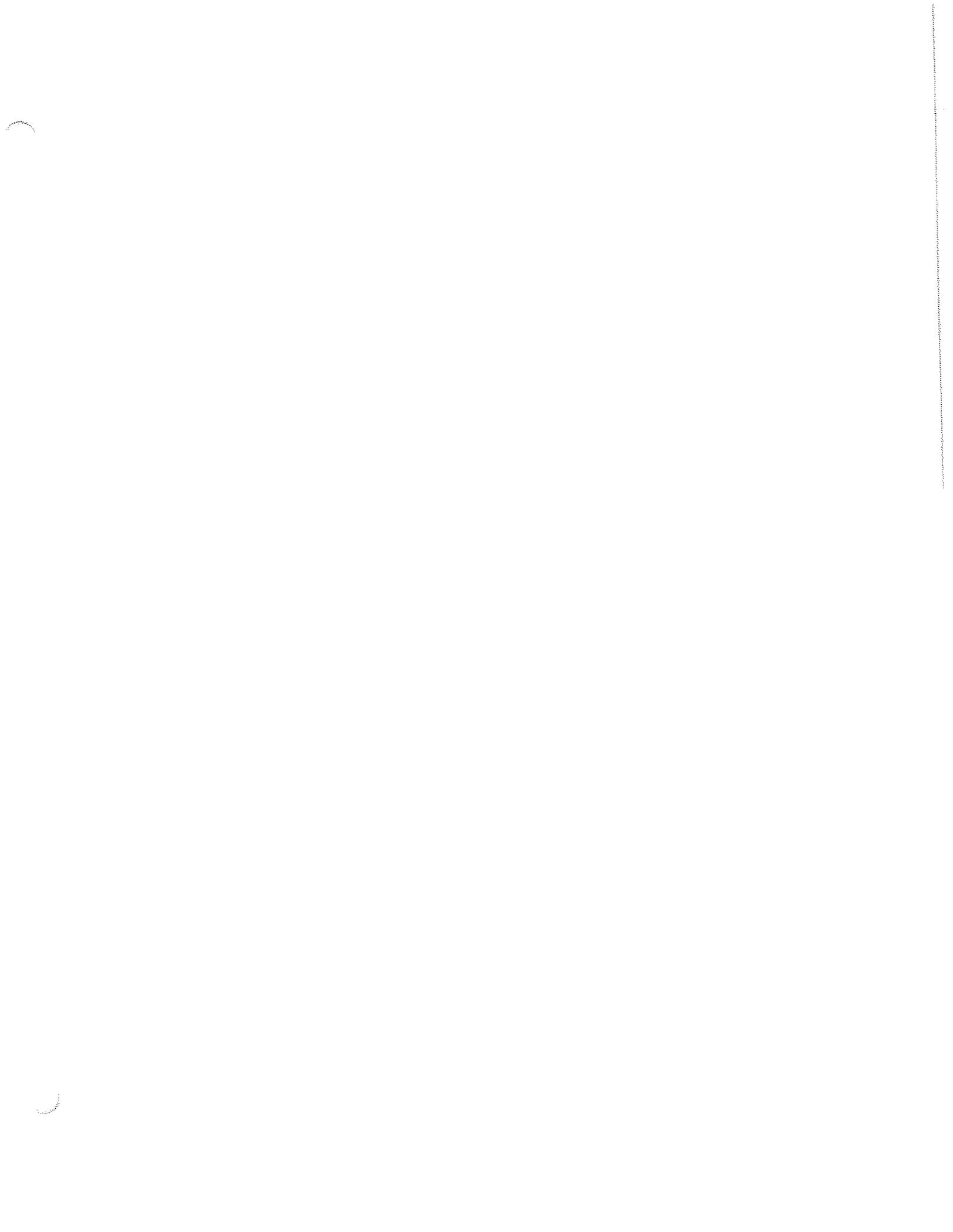
IN WITNESS WHEREOF, this receipt has been signed and delivered on behalf of the West Virginia Water Development Authority, and the Branchland/Midkiff Public Service District, Lincoln County, West Virginia, has caused this receipt to be executed by its Acting Chairman, as of the 29th day of July, 1998.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

By:   
Director

BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT

By:   
Acting Chairman



**BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT**

Rt. 2, Box 496  
Branchland W.Va. 25506-9756

(304) 778-7711

July 14, 1998

West Virginia Water Development  
Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571

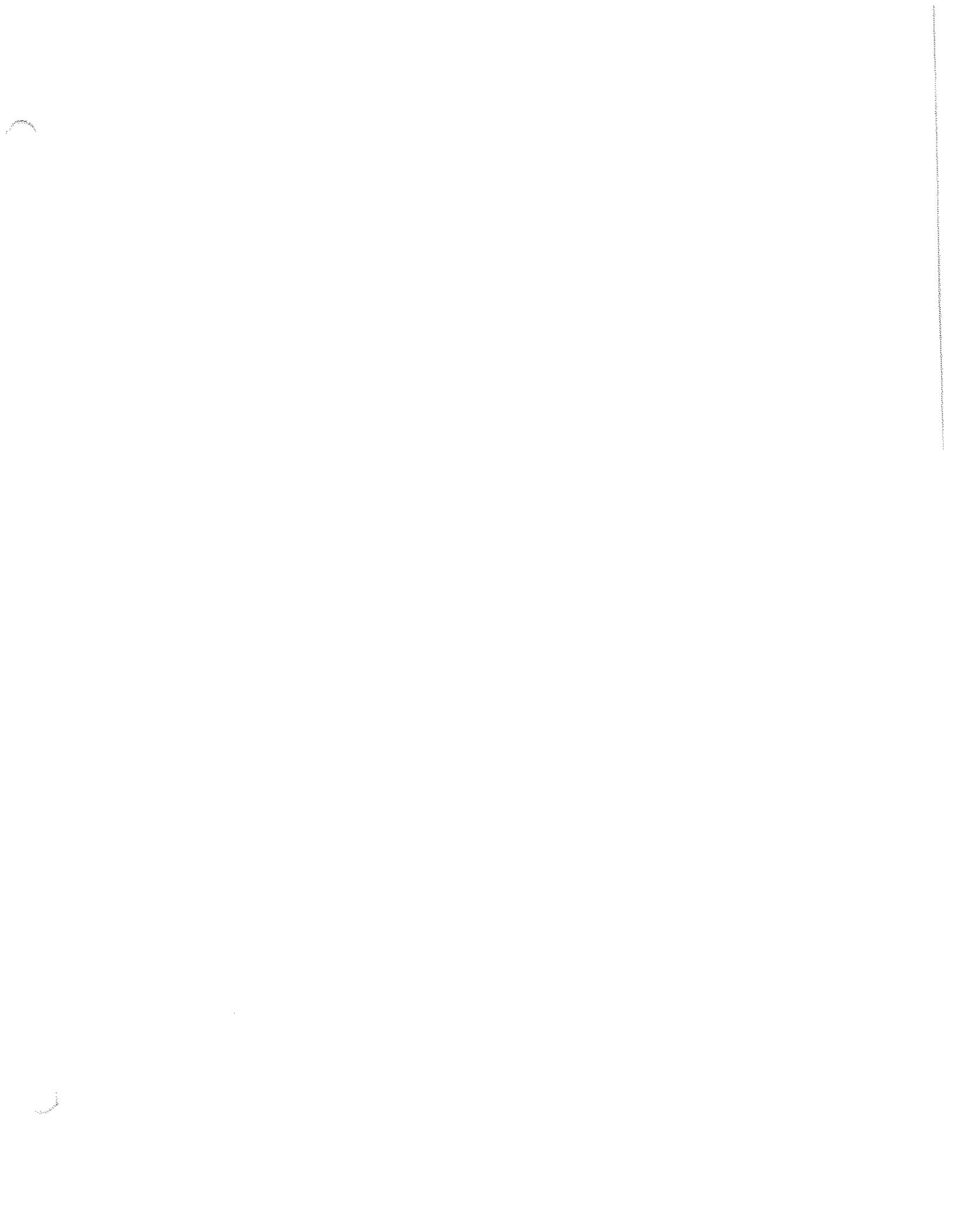
**NOTICE OF DELIVERY OF BOND**

Pursuant to Paragraph 3.4 of the Loan Agreement between the West Virginia Water Development Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council, and the Branchland/Midkiff Public Service District, you are hereby notified that the District can deliver the Bond on any date on or after July 22, 1998.

**BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT**

By: *Doris McCoy*  
Secretary

*Copy*  
*Mailed*  
*07/14/98*  
*RM*



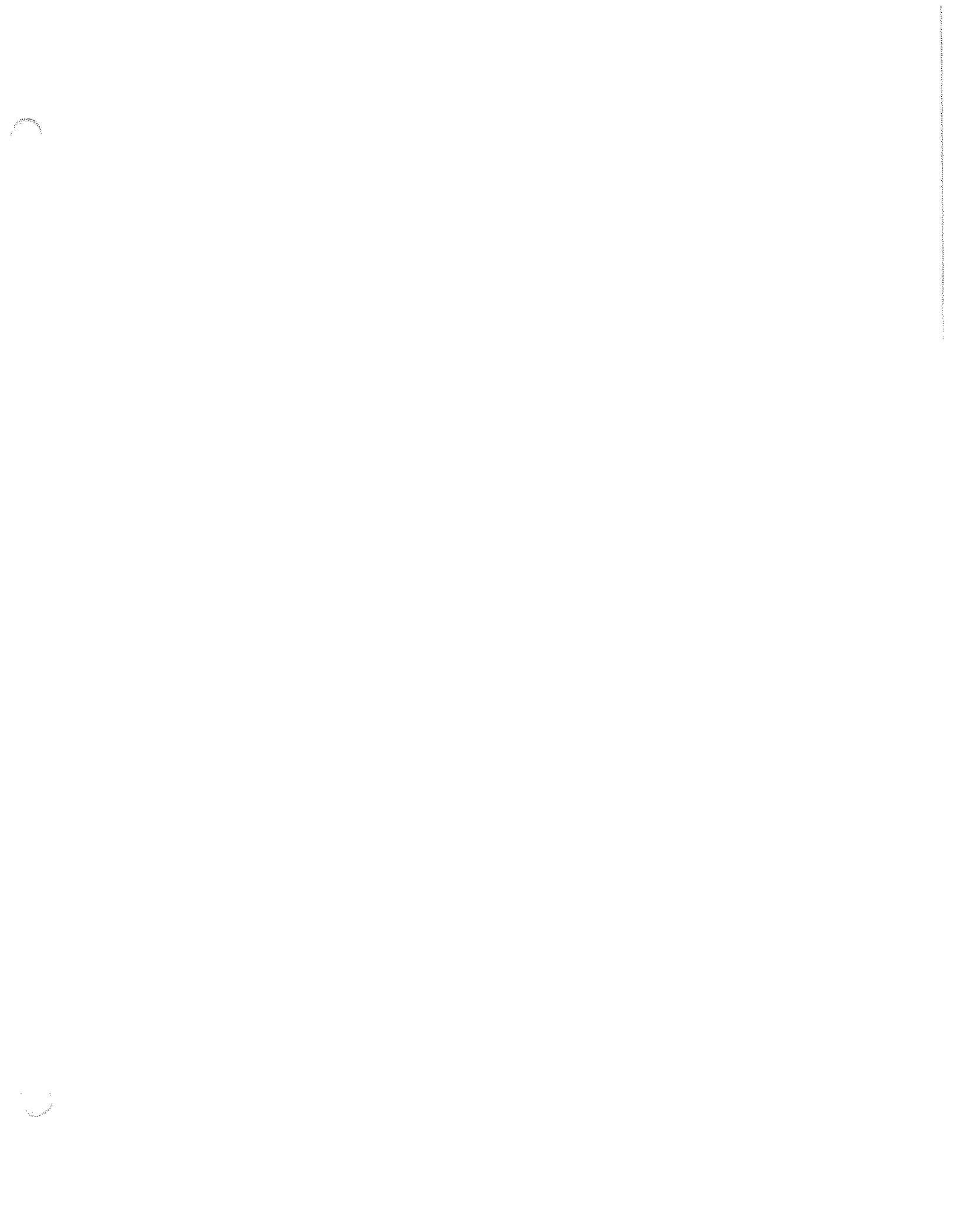
REGISTRY

\$1,280,000

BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998 (WEST VIRGINIA INFRASTRUCTURE FUND)

<u>BOND NO.</u>	<u>AMOUNT</u>	<u>HOLDER</u>	<u>DATE ACQUIRED</u>
R-1	\$1,280,000	West Virginia Water Development Authority <u>180 Association Drive</u> <u>Charleston, WV 25311-1571</u>	July 29, 1998

ALL ASSIGNMENTS OR CHANGES OF OWNERSHIP OF THIS BOND MUST BE REPORTED ON THIS REGISTRY PURSUANT TO SECTION 3.05 OF THE BOND RESOLUTION.





United States  
Department of  
Agriculture

Rural Development

Federal Building, Room 320  
75 High Street  
Morgantown, WV 26505  
TELEPHONE: (304) 291-4796  
FAX: (304) 291-4159  
TTY/TDD: (304) 284-5941

\$1,280,000  
BRANCHLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

CONSENT TO ISSUANCE OF PARITY BOND AND  
WAIVER OF DEBT SERVICE COVERAGE REQUIREMENT

United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), as the registered owner of all the \$180,000 Branchland/Midkiff Public Service District Water-Works System Revenue Bond, Series 1966, issued pursuant to a resolution adopted August 31, 1966 (the "Prior Bond"), hereby consents to the issuance by the Branchland/Midkiff Public Service District, Lincoln County, West Virginia (the "District"), of not more than \$1,280,000 in aggregate principal amount of parity water revenue bonds (the "1998 Bond") to be sold to the West Virginia Infrastructure and Jobs Development Council. The Government hereby further consents that the 1998 Bond may be payable from the revenues of the water system of the District and otherwise secured on a parity with the Prior Bond. This consent is given pursuant to Section 14 of the bond resolution authorizing the Prior Bond.

In addition, the Government hereby waives the one hundred fifty percent (150%) debt service coverage requirement set forth in Section 14B of the bond resolution authorizing the Prior Bond. Upon the issuance of the 1998 Bond, the debt service coverage requirement for the Prior Bond shall be one hundred fifteen percent (115%) of the maximum amount of annual debt service on the Prior Bond and the 1998 Bond, as provided in the bond resolution authorizing the issuance of the 1998 Bond.

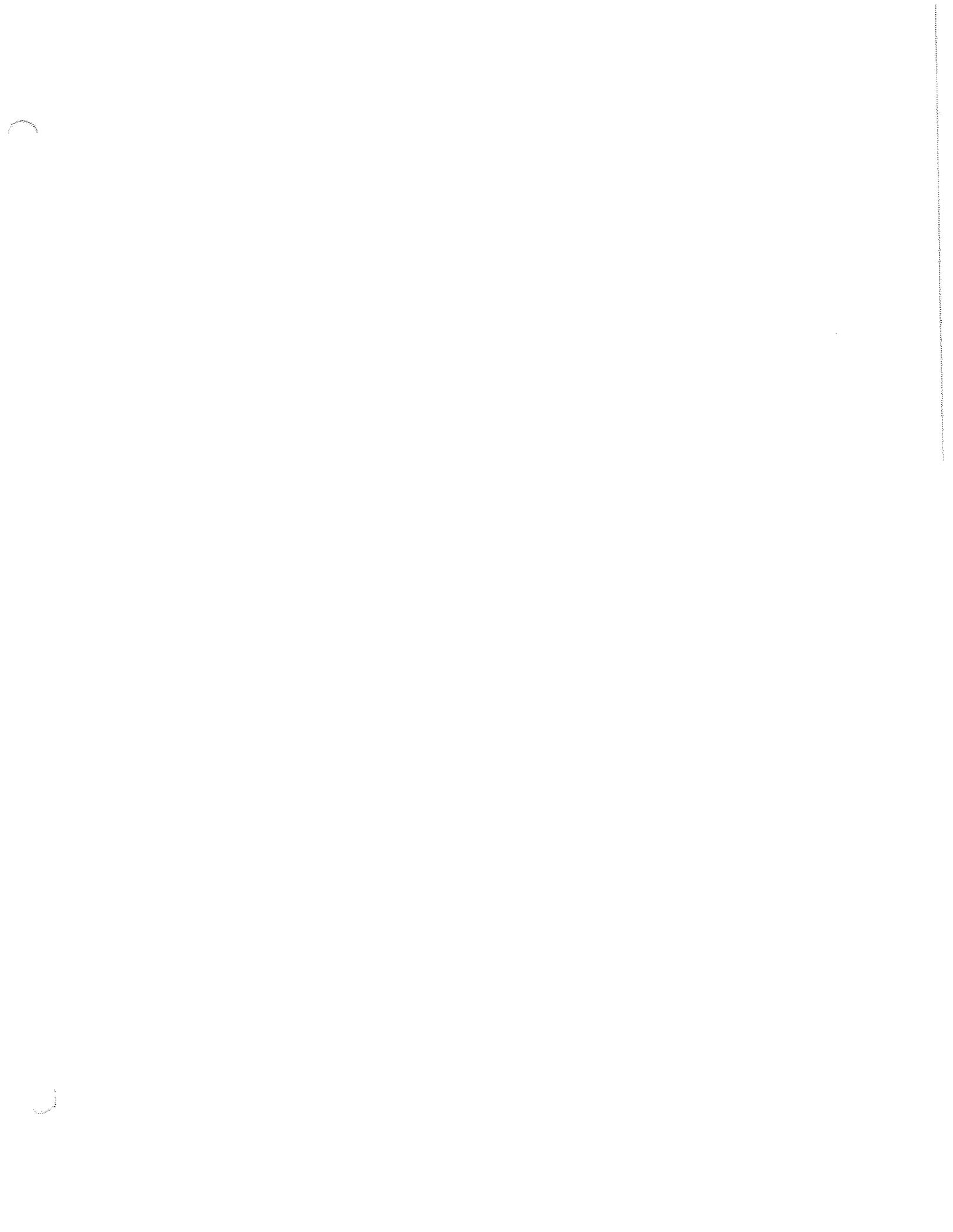
By the execution of this consent and waiver, the undersigned hereby certifies that he is fully empowered and authorized to execute this consent and waiver on behalf of the Government.

WITNESS my signature this 26th day of February, 1998.

UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF  
AGRICULTURE, Rural Development

By:   
Robert D. Lewis  
State Director





RESOLUTION OF THE BOARD OF THE BRANCLAND/MIDKIFF  
PUBLIC SERVICE DISTRICT APPOINTING RONALD D. LUCAS  
TO SERVE AS ACTING CHAIRMAN

WHEREAS, the Branchland/Midkiff Public Service District (the "District"), during the temporary illness and absence of its duly elected Chairman, Harold R. Smith, finds it necessary to appoint an Acting Chairman in order to conduct its business affairs; and

WHEREAS, the remaining members of the Public Service Board desire to appoint Ronald D. Lucas to serve as acting Chairman until such time as Harold R. Smith returns to good health and is able to resume his role as Chairman of the District.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE DISTRICT AS FOLLOWS:

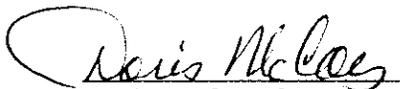
RESOLVED, that Ronald D. Lucas is hereby appointed Acting Chairman of the District, to hold office during the illness of Harold R. Smith; and

RESOLVED FURTHER, that said Acting Chairman shall perform the duties and have the powers of the Chairman during his absence and shall perform such other duties as the Board may designate from time to time.

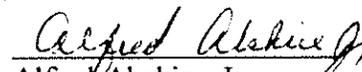
Adopted by the Public Service Board of the District at a special meeting duly called and held on the 22nd day of July 1998.

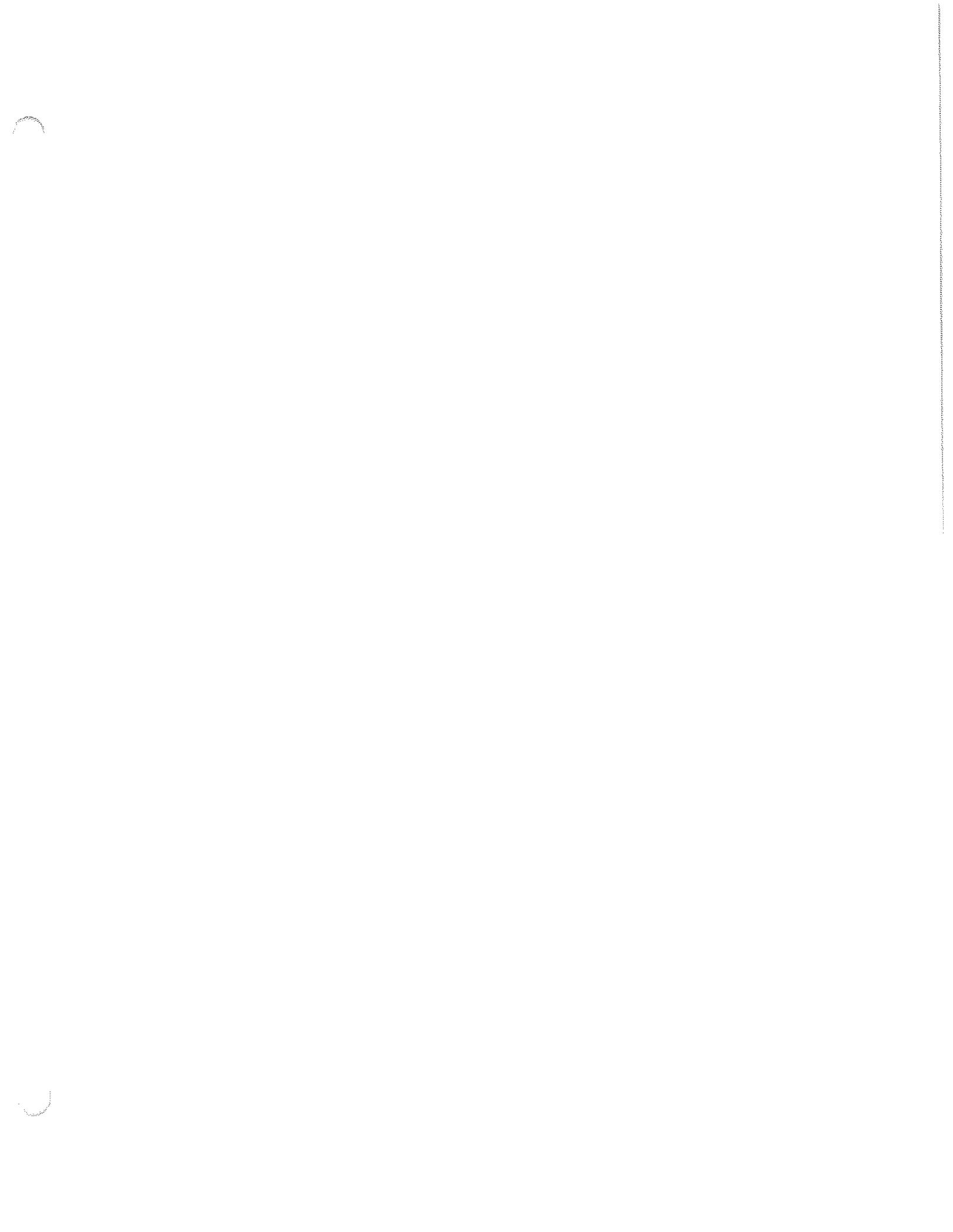
[SEAL]

ATTEST:

  
Doris McCoy, Secretary

  
\_\_\_\_\_  
Ronald D. Lucas

  
\_\_\_\_\_  
Alfred Abshire, Jr.



LAW OFFICES  
**GOODWIN & GOODWIN, LLP**  
P. O. BOX 2107  
1500 ONE VALLEY SQUARE  
CHARLESTON, WEST VIRGINIA 25328-2107  
304/346-7000  
TELECOPIER 304/344-9692

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
304/485-2345

P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

July 29, 1998

REPLY TO:

West Virginia Infrastructure and  
Jobs Development Council  
980 One Valley Square  
Charleston, WV 25301

West Virginia Water Development  
Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571

Re: \$1,280,000 Branchland/Midkiff Public Service District  
Water Revenue Bonds, Series 1998  
(West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We are bond counsel to the Branchland/Midkiff Public Service District (the "District"), a public service district, public corporation and political subdivision duly created under the laws of the State of West Virginia located in Lincoln County, West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the Loan Agreement, dated July 29, 1998, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the District and the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the issue of a bond of the District, dated July 29, 1998 (the "Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are in the principal amount of \$1,280,000. The Bonds are issued in the form of one bond, fully registered as to principal to the Authority, with principal payable in installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 1999, as set forth on Exhibit A incorporated in and made a part of the Bond.

The Bonds are issued for the purpose of financing a portion of the acquisition and construction costs for a water system extension (the "System") and paying certain issuance and other costs in

## GOODWIN & GOODWIN, LLP

connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Local Statute"), and the Bond Resolution duly adopted by the District on July 22, 1998 (the "Local Act"), pursuant to and under which Local Statute and Local Act the Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the District and is a valid and binding special obligation of the District enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the District without the consent of the Authority and the Council.
3. The District is a duly organized and presently existing public service district, public corporation and political subdivision duly created under the laws of the State of West Virginia, with full power and authority to acquire and construct the System and to issue and sell the Bonds, all under the Local Statute and other applicable provisions of law.
4. The District has legally and effectively adopted the Local Act and has satisfied all other necessary requirements in connection with the issuance and sale of the Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Article IV of the Loan Agreement.
5. The Bonds are a valid and legally enforceable special obligation of the District, payable from the Net Revenues of the District on a parity with the 1966 Bonds, all in accordance with the terms of the Bonds and the Local Act and have been duly issued and delivered to the Authority.
6. The Bonds are, by statute, exempt from registration.
7. The Bonds are, by the Local Statute, exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

No opinion is given herein as to the effect upon enforceability of the Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

GOODWIN & GOODWIN, LLP

We have examined an executed and authenticated Bond numbered R-1, and in our opinion, the form of the Bond and its execution and authentication are regular and proper.

Respectfully submitted,

*Goodwin + Goodwin, LLP*  
GOODWIN & GOODWIN, LLP



**HANNA & BONHAM**  
**ATTORNEYS AT LAW**  
**512 D STREET**  
**P. O. BOX 8070**  
**SOUTH CHARLESTON, WEST VIRGINIA 25303**

**H. WYATT HANNA III**  
**LARRY M. BONHAM**

(304) 744-3150  
FAX (304) 744-3157

July 29, 1998

WV Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1571

Jackson & Kelly  
P.O. Box 553  
Charleston, WV 25322

RE: \$1,280,000 Branchland-Midkiff Public Service  
District  
Water Revenue Bonds, Series 1998  
(West Virginia Infrastructure Fund)

Dear Ladies and Gentlemen:

We are Counsel to the Branchland-Midkiff Public Service District (the "District"). We have reviewed various documents relating to the above-captioned bonds of the District (the "Bonds"), the Loan Agreement by and between the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Infrastructure and Jobs Development Council, and the District, dated July 29, 1998, and a Resolution duly enacted and adopted by the Public Service Board of the District (the "Board") and effective on July 22, 1998 (the "Resolution") and other documents relating to the Bonds. Terms used in this opinion and not otherwise defined herein shall have the same meanings as contained in the Loan Agreement and the Resolution. We are of the opinion as follows:

1. The District is a duly organized and presently existing public service district, with full power and authority to acquire and construct the Project referred to in the Loan Agreement and to issue and sell the Bonds, all under the Resolution and other applicable provisions of law.

WV Water Development Authority  
Jackson & Kelly  
Bond Opinion  
Page 2  
July 29, 1998

2. The Loan Agreement has been duly authorized, executed and delivered by the District, and assuming due authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the District in accordance with its term.

3. The members of the Board were duly and properly appointed and are thereby authorized to act on behalf of the District.

4. The Resolution has been duly enacted by the Board and is in full force and effect.

5. The execution and delivery of the Bonds and the loan Agreement and the consummation of the transactions contemplated by the Resolution and the Loan Agreement and the carrying out of the terms thereof do not and will not in any material respect conflict with or constitute on the part of the District a breach of or default under any agreement or other instrument to which the District is a party or any existing law, regulation, court order or consent decree to which the District is subject.

6. The District has received all necessary permits, licenses, approvals and authorizations that are presently obtainable to acquire and construct and to finance the Project including a letter from the West Virginia Infrastructure and Jobs Development Council and approval by the Public Service Commission of West Virginia.

7. The District has obtained from the West Virginia Public Service Commission a valid, final and non-appealable Recommended Decision and Commission Order in Case No. 97-0964-PWD-CN which lawfully authorizes the District to proceed with the acquisition and construction of the District's water system extension and approval of issuance of the above-captioned bond.

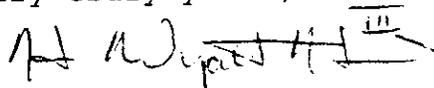
8. To the best of our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bonds or the collection or pledge of the revenues.

WV Water Development Authority  
Jackson & Kelly  
Bond Opinion  
Page 3  
July 29, 1998

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bonds and in the Resolution may be limited by Bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. Wyatt Hanna, III". The signature is written in a cursive style with some horizontal strokes.

H. Wyatt Hanna, III

HWHIII/rb



**HANNA & BONHAM**  
**ATTORNEYS AT LAW**  
512 D STREET  
P. O. BOX 8070  
SOUTH CHARLESTON, WEST VIRGINIA 25303

**H. WYATT HANNA III**  
**LARRY M. BONHAM**

(304) 744-3150  
FAX (304) 744-3157

July 29, 1998

Ms. Susan J. Riggs, Esquire  
Executive Secretary  
WV Infrastructure & Jobs  
Development Council  
980 One Valley Square  
Charleston, WV 25301

RE: Branchland-Midkiff Public Service District,  
Lincoln County, WV  
Water Rehabilitation Project No. 97-W-298

Dear Ms. Riggs:

This firm represents the Branchland-Midkiff Public Service District with regard to the above referenced project. This Title Opinion is being provided to you to satisfy your Agency's requirements with regard to the District's loan through the West Virginia Infrastructure and Jobs Development Council. As such, please be advised of the following:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the necessary sites, including easements and/or rights-of-way, being provided by the Grantee, Branchland-Midkiff Public Service District, for the water rehabilitation project identified as Project No. 97-W-298.

2. That I have examined the records on file in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, the county in which this project is to be located, and, in my opinion, the Grantee, Branchland-Midkiff Public Service District, has, or will acquire through the process of formal condemnation, legal title or such other estate or interest in the necessary site components for the above referenced project, including easements and/or rights-of-way, sufficient to assure undisturbed use and possession for the purpose of construction, operation, and maintenance for the estimated life of the facilities to be constructed.

Ms. Susan J. Riggs, Esquire  
Page 2  
July 29, 1998

3. That the Grantee, Branchland-Midkiff Public Service District has instituted formal condemnation proceedings in the Circuit Court of Lincoln County, West Virginia, to acquire the necessary site components, including easements and/or rights-of-way for this project concerning the following individuals:

A. Alvie Lucien Vance, Tax Map 5, Parcel 0009, Laurel Hill District, said real property being more particularly described in a Deed which is of record in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, in Deed Book 205, at Page 24. The District is seeking an easement for the construction of a bore pit and a creek crossing around an existing bridge consisting of the laying of approximately 80 linear feet of 8" water line.

B. Virginia Chapman, Tax Map 15, Parcel 0069, Sheridan District, said real property being more particularly described in a Deed which is of record in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, in Deed Book 201, at Page 462. The District is seeking an easement for the construction of a creek crossing around an existing culvert which will include the laying of approximately 50 linear feet of 6" water line.

C. Clarence Prichard, Park Prichard and Ida Prichard, his wife, Tax Map 5, Parcel 0016, Laurel Hill District, said real property being more particularly described in a Deed which is of record in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, in Deed Book 163, at Page 488. The District is seeking an easement for the construction of certain small stream crossings to go around two existing culverts which will include the laying of approximately 100 linear feet of 6" water line.

The Circuit Court of Lincoln County, West Virginia, has currently scheduled hearings with regard to the District's request for rights of entry upon these properties for August 28, 1998, at 10:30 a.m., and this Title Opinion is made subject to the District obtaining these necessary rights of entry.

4. At the present time, the District also has certain outstanding documents wherein the parties have agreed to grant the District the requested easement and rights of way, however, to date, the appropriate document has not been received by the District. These specific individuals are as follows:

Ms. Susan J. Riggs, Esquire  
Page 3  
July 29, 1998

A. Leon Dial and his heirs, concerning certain real property located at Tax Map 18, Parcel 0039, in Sheridan District, said real property being more particularly described on a Deed which is of record in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, in Deed Book 120, at Page 385.

B. Philip Diez, concerning certain real property located at Tax Map 19, Parcel 0003, in Sheridan District, said real property being more particularly described on a Deed which is of record in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, in Deed Book 273, at Page 713.

C. JoAnn Jeffers, concerning certain real property located at Tax Map 5, Parcel 4.1, in Laurel Hill District, said real property being more particularly described on a Deed which is of record in the Office of the Clerk of the County Commission of Lincoln County, West Virginia, in Deed Book 274, at Page 46.

The District will institute condemnation proceedings with regard to these properties in the event the necessary easement is not received within thirty (30) days of the loan closing. The District's consulting engineer, Haworth, Meyer & Boleyn, Inc., has advised this office that the contractor for this project will not institute work on these properties within this thirty (30) day time period.

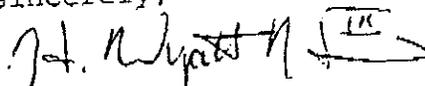
5. That any deeds or other documents which have been acquired to date by the Grantee, Branchland-Midkiff Public Service District, have been duly recorded in the aforesaid Clerk's Office in order to protect the title of the owner and interest of the Grantee.

6. That I have been advised by the District's consulting engineers, Haworth, Meyer and Boleyn, Inc., of South Charleston, West Virginia, that the necessary permits as may be required by governing authorities have or will be acquired for this project.

Ms. Susan J. Riggs, Esquire  
Page 4  
July 29, 1998

If you should have any questions regarding any of the information contained in this letter, please do not hesitate to contact this office.

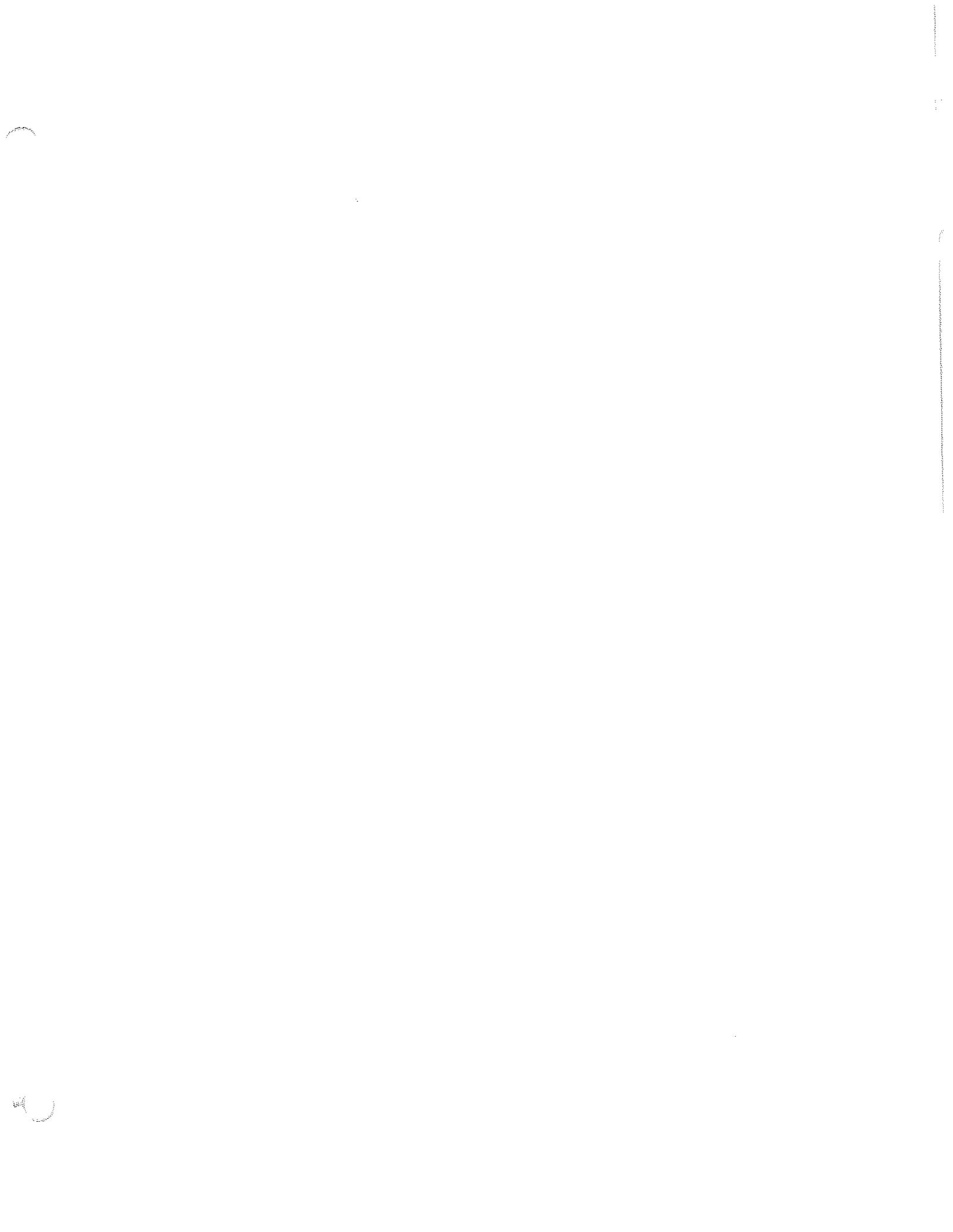
Sincerely,



H. Wyatt Hanna, III

HWHIII/rb

cc: Branchland-Midkiff PSD  
Terry Myers  
Mark A. Bowen, CPA  
William K. Bragg, Jr., Esquire



WV MUNICIPAL BOND COMMISSION  
812 Quarrier Street, Suite 300  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM  
Date of Report: July 29, 1998  
(See Reverse for Instructions)

ISSUE: Branchland/Midkiff Public Service District, Water Revenue Bonds,  
Series 1998 (West Virginia Infrastructure Fund)  
ADDRESS: Route 2, Box 496  
Branchland, WV 25506 COUNTY: Lincoln  
PURPOSE: New Money X  
OF ISSUE: Refunding \_\_\_ Refunds issue dated: N/A  
ISSUE DATE: July 29, 1998 CLOSING DATE: July 29, 1998  
ISSUE AMOUNT: \$1,280,000 RATE: 0%  
1ST DEBT SERVICE DUE: \_\_\_ 1ST PRINCIPAL DUE: December 1, 1999  
1ST DEBT SERVICE AMOUNT: \$ PAYING AGENT: Municipal  
Bond Commission

BOND COUNSEL: Goodwin & Goodwin, LLP LENDER: West Virginia Infrastructure and  
Contact Person: W.K. Bragg, Jr. Jobs Development Council  
Phone 346-7000 Contact Person: Susan J. Riggs  
Phone: 558-4607

REGISTRAR: One Valley Bank, National Association  
Contact Person: Charlotte Morgan  
Phone: (304) 348-7239

KNOWLEDGEABLE ISSUER CONTACT: OTHER: Lender's Counsel  
Contact Person: Harold R. Smith Contact Person: Samme L. Gee  
Position: Chairman Phone: 340-1318  
Phone: 778-7711

-----DEPOSITS TO MBC AT CLOSE:  
By \_\_\_ Wire \_\_\_ Accrued Interest: \$ \_\_\_ 0  
\_\_\_ Check \_\_\_ Capitalized Interest: \$ \_\_\_ 0  
\_\_\_ Reserve Account: \$ \_\_\_ 0  
\_\_\_ Other: \$ \_\_\_\_\_

-----REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_ Wire \_\_\_ To Escrow Trustee: \$ \_\_\_ N/A  
\_\_\_ Check \_\_\_ To Issuer: \$ \_\_\_ N/A  
\_\_\_ IGT \_\_\_ To Cons. Invest. Fund: \$ \_\_\_ N/A  
\_\_\_ Other: \$ \_\_\_\_\_

Notes: \_\_\_\_\_  
FOR MUNICIPAL BOND COMMISSION USE ONLY:  
DOCUMENTS  
REQUIRED: \_\_\_\_\_  
TRANSFERS  
REQUIRED: \_\_\_\_\_

(print on back of form)

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The Commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by WV Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes".

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at close are required, please submit this form before closing. If no significant facts change by closing, no resubmission at close is required. If, however, there are changes, please submit an updated form, with changes noted, at close.

If you should have any questions concerning this form, please call the Commission.



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 24th day of July, 1998.

CASE NO. 97-0964-PWD-CN (REOPENED)

BRANGLAND-MIDKIFF PUBLIC SERVICE DISTRICT  
Application for a certificate of convenience and necessity to construct a water line extension to serve the Fourmile Creek Red River Fork areas of Lincoln County, and to provide certain fire hydrants and other appurtenances thereto, and for approval of financing incidental thereto.

**COMMISSION ORDER REOPENING PROCEEDING  
AND GRANTING PETITION**

On July 1, 1998, the Branchland-Midkiff Public Service District (District) filed a petition to reopen its certificate case and for approval of more specific language regarding the funding in the Recommended Decision entered on April 24, 1998, and became Final Order on May 14, 1998. The District also requested expedited treatment of its petition.

In accordance with the Commission's internal operating procedures, the Company's petition was forwarded to the Commission's appropriate divisions for investigation, response and recommendation.

On July 10, 1998, Commission Staff (Staff) filed its "Initial and Final Joint Staff Memorandum" with an attached memorandum from Technical Staff. Technical Staff stated that the language submitted for approval is as follows:

IT IS THEREFORE ORDERED that the Recommended Decision entered in the above referenced proceeding on April 14, 1998, be clarified, and the Branchland-Midkiff Public Service District be given approval to borrow not more than \$1,280,000 in the form of a 40 year 0% interest loan from the West Virginia Infrastructure and Job Development Council, and obtain a grant of not more than \$1,280,000 from the West Virginia Infrastructure and Jobs Development Council to finance this water line extension project. This clarification of the project financing is subject to the same conditions as contained in the May 14, 1998 Final Order entered on this proceeding.

Staff stated that the language is a clarification and not a deviation from the funding terms and conditions approved in this case. Staff further stated that it had no objection to the language. Accordingly, Staff Counsel recommended that this case be reopened and the language approved.

Upon review of the District's petition and Staff's memorandum filed in response thereto, we believe that it is reasonable to approve the instant language.

#### FINDINGS OF FACT

1. On July 1, 1998, the Branchland-Midkiff Public Service District (District) filed a petition to reopen its certificate case and for approval of more specific language regarding the funding in the Recommended Decision entered on April 24, 1998, and became Final Order on May 14, 1998. See, District's petition filed on July 1, 1998.

2. On July 10, 1998. Commission Staff (Staff) filed its "Initial and Final Joint Staff Memorandum" wherein Staff recommended that the clarifying language be approved. See. Staff's memorandum filed on July 10, 1998.

### CONCLUSION OF LAW

The Commission finds and concludes it is reasonable the clarifying language contained in the District's petition.

### ORDER

IT IS THEREFORE ORDERED that the Branchland-Midkiff Public Service District'S (District) petition to reopen its certificate case and for approval of more specific language regarding the funding in the Recommended Decision entered on April 24, 1998, and became Final Order on May 14, 1998, shall be, and it hereby is, granted.

IT IS FURTHER ORDERED that the Recommended Decision entered in the above referenced proceeding on April 14, 1998, be clarified, and the Branchland-Midkiff Public Service District be given approval to borrow not more than \$1,280,000 in the form of a 40 year 0% interest loan form the West Virginia Infrastructure and Job Development Council, and obtain a grant of not more than \$1,280,000 from the West Virginia Infrastructure and Jobs Development Council to finance this water line extension project. This clarification of the project financing is subject to the same conditions as contained in the May 14, 1998 Final Order entered on this proceeding.

IT IS FURTHER ORDERED that this case shall be, and it hereby is, removed from the Commission's docket of open cases.

A True Copy. Teste:



Sandra Squire  
Executive Secretary

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

FINAL  
5-14-98

Entered: April 24, 1998

CASE NO. 97-0964-PWD-CN

BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT,  
a public utility.

Application for a certificate of convenience and necessity to construct a water line extension to serve the Fourmile Creek and Red River Fork areas of Lincoln County, and to provide certain fire hydrants and other appurtenances thereto, and for approval of financing incidental thereto.

RECOMMENDED DECISION

On July 30, 1997, Branchland-Midkiff Public Service District submitted a prefiling notice to the Public Service Commission concerning the District's intent to file a formal petition for a certificate of convenience and necessity to construct and operate a water main extension project to serve approximately 300 new customers in the areas of Fourmile Creek and Red River Fork in Lincoln County, West Virginia.

On August 18, 1997, H. Wyatt Hanna, III, attorney for the District, filed a duly executed affidavit of publication demonstrating publication for public legal notice of the prefiling notice on August 6 and 13, 1997, in The Lincoln Journal and The Weekly News Sentinel, separate newspapers duly qualified by the Secretary of State, published and of general circulation in Lincoln County.

On October 14, 1997, Mr. Hanna filed a second duly executed affidavit of publication demonstrating publication for public legal notice of an amended prefiling notice on October 1 and 8, 1997, in the aforementioned newspapers. The amended notice contained a revised and increased proposed rate schedule.

Pursuant to a request filed by the District on November 10, 1997, the Staff of the Public Service Commission filed its Final Joint Staff Memorandum on December 15, 1997, recommending that the prefiling case be converted to a formal certificate case.

On December 16, 1997, the Public Service Commission entered a Notice of Filing which designated this matter as a formal application for a certificate of convenience and necessity and required publication for public legal notice of the Notice of Filing. The Notice of Filing provided for anyone in opposition to this proposed project to sign a petition of protest in the Office of the County Clerk of Lincoln County, Lincoln County

Courthouse, Hamlin, West Virginia, or to file written statements of protest or objection with the Executive Secretary of the Public Service Commission within thirty (30) days of said publication.

By a Commission Referral Order entered December 23, 1997, and a Corrective Commission Referral Order entered December 30, 1997, this matter was referred to the Division of Administrative Law Judges for further proceedings with a decision due date of July 13, 1998.

By a previous Procedural Order entered January 9, 1998, this matter was scheduled for hearing to be held on April 7, 1998, in Lincoln County, West Virginia.

On March 12, 1998, the Staff of the Public Service Commission filed its Final Joint Staff Memorandum in this matter. Staff pointed out that no protests or objections had been filed in this matter. Additionally, Staff recommended approval of the District's application without further proceedings and cancellation of the hearing scheduled herein, if the District agreed to the essential elements of the Staff recommendation in this matter.

In response to the Staff recommendation, H. Wyatt Hanna, III, counsel for Branchland-Midkiff Public Service District, filed a letter on March 19, 1998, stating that the District had no objection to the Staff recommendation and requesting that the hearing scheduled for April 7, 1998, be cancelled.

By a Procedural Order entered March 25, 1998, the hearing previously scheduled to be held on April 7, 1998, was cancelled pending entry of a Recommended Decision in this matter.

On April 14, 1998, the District, by counsel, filed a letter requesting an expedited decision in this matter.

Consequently, the application filed on December 16, 1997, shall be approved, as amended, and a certificate of convenience and necessity shall be granted to the Branchland-Midkiff Public Service District for the construction and operation of the water project detailed in said application.

#### FINDINGS OF FACT

1. On December 16, 1997, Branchland-Midkiff Public Service District filed an application for a certificate of convenience and necessity to construct and operate a water line extension to serve approximately 300 new customers in the Fourmile Creek and Red River Fork areas of Lincoln County and for approval of a proposed financial package to fund said construction. (See, application filed December 16, 1997).

2. This proposed project consists of approximately 6,800 feet of 8" water line, 76,620 feet of 6" water line, 13,825 feet of 2" water line, one 150 gallons per minute duplex water booster pump station, one 120,000 gallon water storage tank, as well as fire hydrants and other appurtenances. Treated water will be supplied by the Town of West Hamlin. (See, application filed December 16, 1997).

3. Pursuant to a Commission Order entered December 16, 1997, the Applicant caused to be published for public legal notice of this application a Notice of Filing on December 24, 1997, in The Lincoln Journal and The Weekly News Sentinel, newspapers duly qualified by the Secretary of State, published and of general circulation in Lincoln County, West Virginia. Said Notice made provision for the filing of protests or objections to this project within thirty (30) days from the date of publication, and for summary action on this application in the absence of protest or objection. As of the date of this Recommended Decision, no protests or objections to this project have been filed with the Commission (See, Affidavit of Publication filed January 7, 1998, Commission case file generally).

4. Residents of the area to be served by this project currently obtain household water supplies from private drilled wells. The well water is of poor quality and contains iron and sulfur which imparts a bad taste to the water and stains clothing washed in it. (See, Final Joint Staff Memorandum filed March 12, 1998).

5. The Applicant has been granted Permit No. 13,360 for this project by the State Office of Environmental Health Services and the project plans and specifications are in general conformance with the Public Service Commission's rules and regulations. (See, Final Joint Staff Memorandum filed March 12, 1998).

6. The Town of West Hamlin water treatment plant is running efficiently, is in compliance with state regulatory requirements and has the capacity to provide the extra water needed by this project. (See, Final Joint Staff Memorandum filed March 12, 1998).

7. The proposed project is estimated to cost less than \$2,560,000, and will be funded by the West Virginia Infrastructure and Jobs Development Council with a grant of \$1,280,000 and a loan of \$1,280,000 at zero percent interest for forty years. Debt service and bond reserves are a total of \$35,200 annually, and the District's operation and maintenance expense will increase by \$45,772 per year. (See, Final Joint Staff Memorandum filed March 12, 1998).

8. The estimated cost per customer for this project is a feasible \$3,164 and the expected customer density is an acceptable 44 customers per mile. (See, Final Joint Staff Memorandum filed March 12, 1998).

9. The Staff-recommended rates and cash flow analysis will provide a surplus of \$1,136 in addition to the renewal and replacement inclusion of \$6,831 annually with a debt coverage of approximately 124.97%, which is adequate. (See, Final Joint Staff Memorandum filed March 12, 1998).

10. The Staff-recommended tariff includes an adjustment of the Incremental Cost of Purchasing Water from \$3.32 to \$2.85 per thousand gallons, based on currently decreased cost factors involved. (See, Final Joint Staff Memorandum filed March 12, 1998).

11. Pursuant to its review of this application and the documents filed therewith, the Staff of the Public Service Commission has recommended approval of the application and the proposed funding package. (See, Final Joint Staff Memorandum filed March 12, 1998).

12. The Applicant has reviewed the Staff recommendations filed in this matter on March 12, 1998, and has no objection to them. (See, letter filed March 20, 1998).

#### CONCLUSIONS OF LAW

1. This project is convenient in that it will not financially burden the District or its customers and is necessary for the public health and welfare of the region.

2. Under the facts and circumstances of this case and the recommendation of Commission Staff, it is reasonable and fair to approve the application filed December 16, 1997, and to grant a certificate of convenience and necessity to the Branchland-Midkiff Public Service District for the construction and operation of the water line extension detailed in said application.

#### ORDER

IT IS, THEREFORE, ORDERED that the application filed in this matter on December 17, 1997, shall be approved and the Branchland-Midkiff Public Service District shall be granted a certificate of convenience and necessity to construct and operate the water line extension detailed in said application.

IT IS FURTHER ORDERED that the funding package and Staff statement of cash flows for this project shall be approved as set out in the application and Staff recommendation filed herein, and that the Staff-recommended rates and charges, attached hereto as "Appendix A", shall be approved for all service rendered by the District on and after the date this project is substantially complete as certified by the District's project engineer.

IT IS FURTHER ORDERED that if there are any changes in the plans, scope, terms or financing of the project, the District shall notify the Public Service Commission in writing and seek subsequent review and approval of those changes.

IT IS FURTHER ORDERED that the District shall file a copy of its actual tariff as amended herein within ten (10) days of its first use and further that this matter be removed from the Commission's docket of open cases.

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

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

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the

expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

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



Thomas N. Trent  
Administrative Law Judge

TNT:mal

BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT  
CASE NO. 97-0964-PWD-CN  
APPROVED RATES

Available for general domestic, commercial and industrial service.

RATES

First	2,000 gallons used per month	\$ 7.58 per 1,000 gallons
Next	3,000 gallons used per month	6.54 per 1,000 gallons
Next	5,000 gallons used per month	6.20 per 1,000 gallons
Next	10,000 gallons used per month	5.85 per 1,000 gallons
All Over	20,000 gallons used per month	5.16 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than that shown on the following schedule:

5/8	inch meter	\$ 15.35 per month
3/4	inch meter	23.03 per month
1	inch meter	38.38 per month
1-1/4	inch meter	56.03 per month
1-1/2	inch meter	76.75 per month
2	inch meter	122.80 per month
3	inch meter	230.25 per month
4	inch meter	383.75 per month
6	inch meter	767.50 per month
8	inch meter	1,228.00 per month

DELAYED PAYMENT CHARGE

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount paid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

CONNECTION CHARGE

\$50.00 until construction is completed past the applicant's point-of-service.

\$200.00 for all other new service connections.

RECONNECTION CHARGE

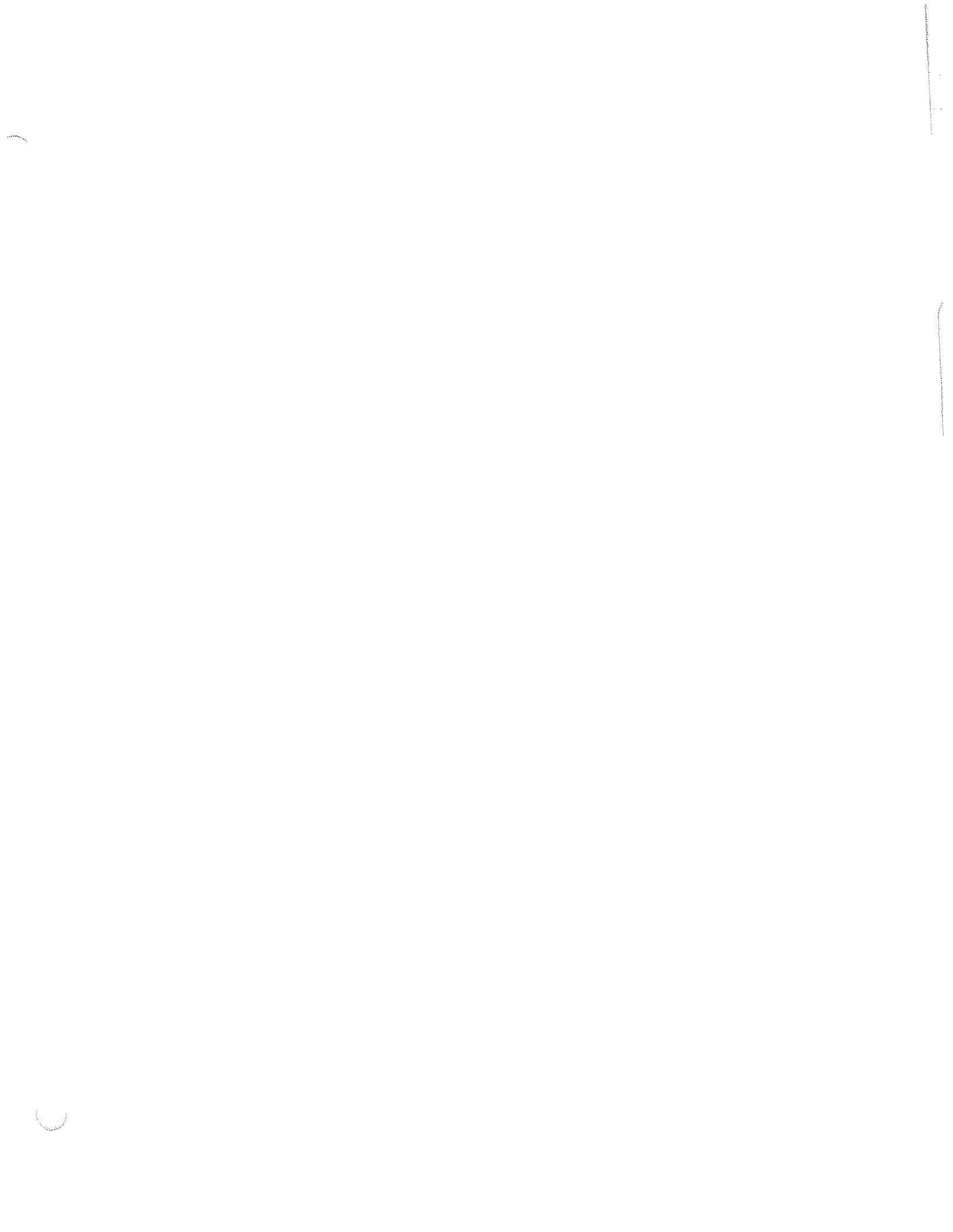
\$10.00

RETURNED CHECK CHARGE

The District may not collect any fee greater than that charged to it by a banking institution and under no circumstances shall the fee collected exceed \$15.00.

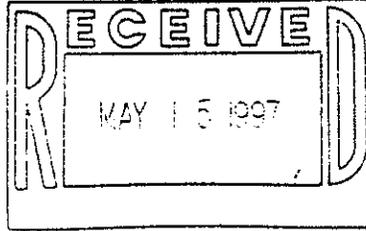
LEAK ADJUSTMENT INCREMENT

\$2.85 per M gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.





# West Virginia Infrastructure & Jobs Development Council



1320 One Valley Square  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire  
Executive Secretary

Public Members:  
Russell L. Isaacs, Chairman  
Cottageville  
James D. Williams, Vice-Chairman  
St. Albans  
Lloyd P. Adams, P.E.  
Wheeling  
James L. Harrison, Sr.  
Princeton

May 12, 1997

Harold R. Smith, Chairman  
Branchland/Midkiff Public Service District  
Rt. 2, Box 496  
Branchland, WV 25506

Re: Binding Commitment Letter  
Water System Extension Project 97W-298

Dear Mr. Smith:

The West Virginia Infrastructure and Jobs Development Council (Council) provides this binding offer of a loan of approximately \$1,280,000 and a grant of approximately \$1,280,000 to the Branchland/Midkiff Public Service District (District) for its project to extend its water system to the Fourmile Creek and Red River Fork areas to serve approximately 256 new customers in Lincoln County (Project). The loan and grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final loan and grant amounts will be established after the District has received bids for the Project. The Council has set aside moneys in the Infrastructure Fund to make this loan and grant upon the District's compliance with the program requirements. The loan and grant will be between the West Virginia Water Development Authority (Authority), who is the administrator of the Infrastructure Fund, acting on behalf of the Council, and the District.

This commitment is contingent upon the District meeting the following schedule:

- a. Plans and specifications for the Project must be submitted to the Bureau for Public Health no later than August 1, 1997.
- b. A prefilng for a certificate of convenience and necessity must be submitted to the Public Service Commission no later than August 1, 1997.
- c. All documentation necessary to convert the prefilng to a formal certificate of convenience and necessity proceeding must be submitted to the Public Service Commission no later than September 10, 1997.
- d. The loan must be closed no later than March 15, 1998.

The Council has the option of withdrawing this funding commitment if any of the above schedule dates are not met. The Council may, when justifiable circumstances occur, offer to extend the schedule dates. Any decision to extend the schedule dates is at the sole discretion of the Council.

David Michael  
May 12, 1997  
Page 2

If the District becomes aware that it will not meet one or more of the schedule dates, the District should immediately notify the Council of this fact and the circumstances which have caused the District to be unable to conform to the schedule.

The Authority will enter into a loan and grant agreement with the District following receipt of the completed Schedule B (the form of which is enclosed herein); a final, nonappealable order from the Public Service Commission authorizing construction of the Project; evidence of all permits; evidence of acceptable bids; and the requisite bond-related documents and opinions in a form and substance satisfactory to the Authority and the Council. Following execution of the loan agreement, the Council will establish a closing date, which date shall be not less than ten business days following the execution by the District of the loan agreement.

No statements or representations made before or after the issuance of this Binding Commitment Letter by any person, agent or employee of the Authority or member of the Council shall be construed as approval to alter or amend this Commitment, as all such amendments or alterations shall only be made in writing after approval of the Council.

If the District has any questions regarding this commitment, please contact Susan J. Riggs at (304) 558-4607.

Sincerely,



Russell L. Isaacs

RLL/bh  
Attachment/Enclosures

cc: David Michael  
Terry Myers  
H. Wyatt Hanna, Esquire

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and immediately return one to the Authority at 1201 Dunbar Avenue, Dunbar, WV, 25064, and one to the Council.

Branchland/Midkiff Public Service District

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Branchland/Midkiff Public Service  
District  
Water System Extension Project  
May 12, 1997

SCHEDULE A

A. Approximate Amount: \$1,280,000 - Loan  
\$1,280,000 - Grant

B. If Loan:

1. Maturity Date: 40 years from date of loan closing
2. Loan Advancement Date(s): Monthly upon receipt of proper requisition.
3. Interest Rate: 0%
4. Debt Service Commencement Date: The quarter following completion of construction, which date must be identified prior to loan closing.
5. Special Conditions (if any):

C. If Grant:

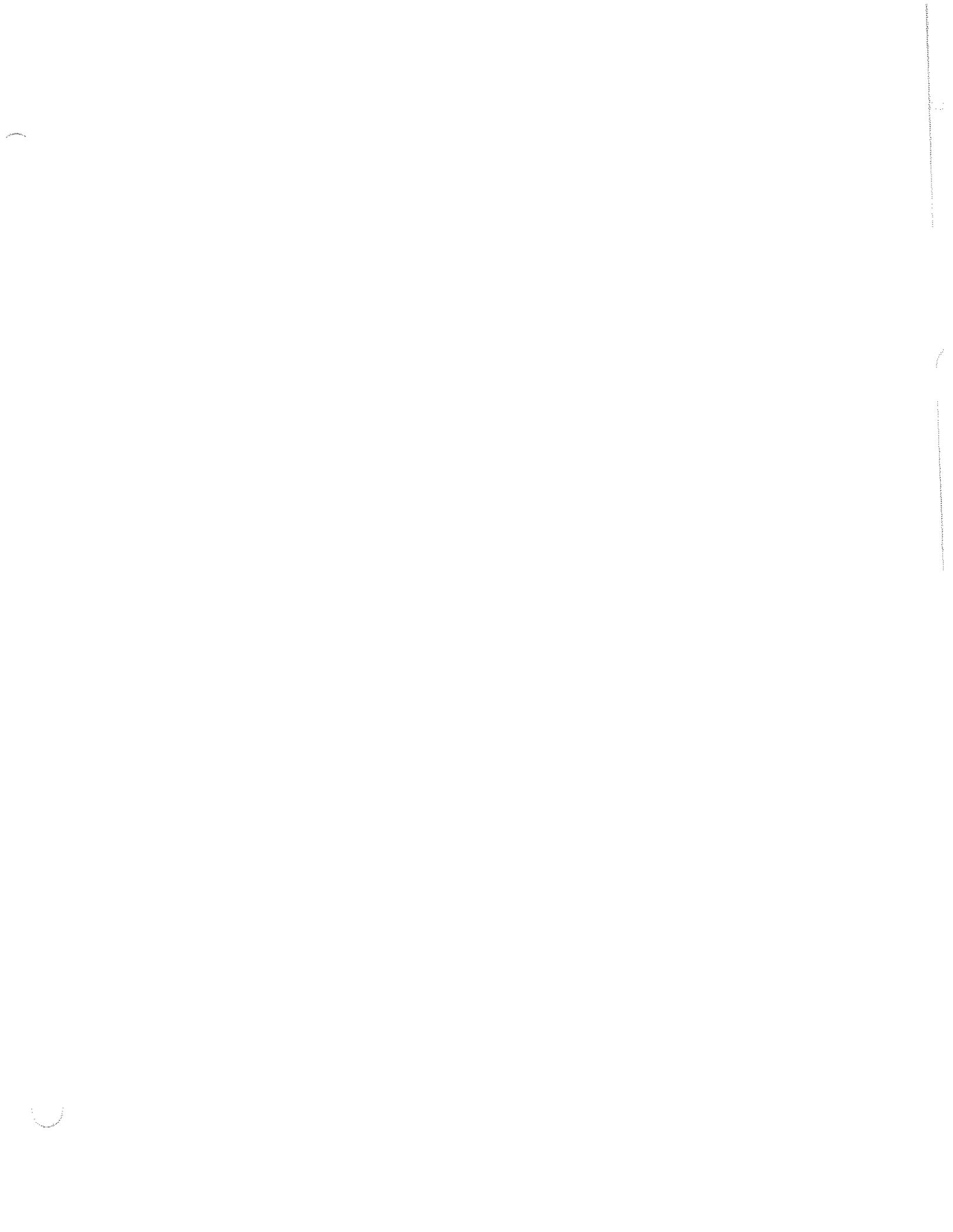
1. a. Grant Advancement Date(s): Monthly, upon receipt of proper requisition and after complete advancement of the Infrastructure Fund loan.
- b. Monthly percentage: None specified.
2. Special Conditions (if any)

NOTICE: The terms set forth above are subject to change following the Governmental Agency's receipt of construction bids.

D. Other Funding Sources: None.

E. Proposed User Rates:

Average: \$29.47/4500 gallons



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 1998  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. R-1

\$1,280,000.00

Date: July 29, 1998

KNOW ALL MEN BY THESE PRESENTS: That BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Lincoln County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner provided therefor, as hereinafter set forth, to the order of the West Virginia Water Development Authority (the "Authority") or registered assigns, the principal sum of One Million Two Hundred Eighty Thousand and 00/100 Dollars (\$1,280,000.00 - U.S. ), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the Record of Advances attached hereto and incorporated herein by reference as a part hereof, without interest on the unpaid principal balance.

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal shall be repaid in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 1999, as set forth on the "Debt Service Schedule" attached as Exhibit A hereto and incorporated herein by reference.

Principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia (the "Registrar"), on the 15th day of the month next preceding such payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated July 29, 1998, by and between the Issuer and the Authority, on behalf of the Council.

This Bond is issued (i) to finance a portion of the costs of the acquisition and construction of water service extensions of the Issuer, the Project, and together with any existing water facilities of the Issuer and any further additions, betterments and improvements thereto, collectively referred to as the "System") and (ii) to pay the costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a

Bond Resolution duly adopted by the Issuer on July 22, 1998 (the "Bond Legislation"), and is subject to all the terms and conditions thereof.

The principal of this Bond is payable only from and secured by a first lien on Net Revenues (as defined in the Bond Legislation) of the System, on a parity with the Issuer's \$180,000 Water-Works System Revenue Bond, Series A (1966) (the "Prior Bonds"), moneys in the Series 1998 Bonds Reserve Account and unexpended proceeds of this Bond. All moneys from the operation of the System shall be deposited into the Revenue Fund established or continued under the Bond Legislation for the prompt payment of the principal of this Bond on a parity with the Prior Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside in a special fund hereby pledged for such purpose. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on this Bond, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with this Bond, as well as the Prior Bonds; provided however, that so long as the Series 1998 Bonds Reserve Account is funded in an amount at least equal to the maximum amount of principal and interest which will come due on this Bond in the then current or any succeeding year, and the reserve account for any other obligations outstanding prior to or on a parity with this Bond, including the Prior Bonds, is funded in an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of this Bond for the terms of which reference is made to the Resolution. Remedies provided the Registered Owners of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Issuer be obligated to pay the same except from the sources set forth above. Under the Bond Legislation, the Issuer has entered into certain covenants with the Authority, for the terms of which reference is made to the Bond Legislation. Remedies provided the Authority are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth herein, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the West Virginia. This Bond is transferable, as provided in the Bond Legislation, only by transfer of registration upon the books of the Registrar, to be made at the request of the registered owner hereof in person or by his attorney duly authorized in writing, and upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney.

All moneys received from the sale of this Bond shall be applied solely to the payment of the costs of acquisition and construction of the Project and the costs of issuance and related costs described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

On August 1, 1999, if the amount set forth on the Record of Advances is less than \$1,280,000, the Authority shall upon written instruction of the Council revise Exhibit B to reflect the lesser amount but amortized at the same interest rate and quarterly payment amount.

Under the Act, this Bond is exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the Bonds, together with all other obligations of the Issuer, do not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S \$180,000 WATER-WORKS SYSTEM REVENUE BOND, SERIES A (1966).

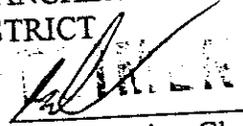
The loan will be in default should any proceeds of the loan funds obtained from this parity bond issue be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

This Bond shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

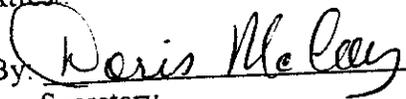
IN WITNESS WHEREOF, BRANCLAND/MIDKIFF PUBLIC SERVICE DISTRICT  
has caused this Bond to be signed by its Acting Chairman and its corporate seal to be hereunto  
affixed and attested by its Secretary, and has caused this Bond to be dated July 29, 1998.

[SEAL]

BRANCLAND/MIDKIFF PUBLIC SERVICE  
DISTRICT

By:   
Acting Chairman

Attest:

By:   
Secretary

# CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is to certify that this Bond is one of the Bonds described in and issued under the provisions of the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above.

Date: July 29, 1998.

~~SECRET~~  
ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By:

*Charlotte S. Morgan*  
Authorized Officer

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ the within-mentioned Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Bond on the books of the Registrar on behalf of said Issuer with full power of substitution in the premises.

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

IN THE PRESENCE OF :

\_\_\_\_\_

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$ 158,296.00	July 29, 1998	(16) \$	
(2) \$		(17) \$	
(3) \$		(18) \$	
(4) \$		(19) \$	
(5) \$		(20) \$	
(6) \$		(21) \$	
(7) \$		(22) \$	
(8) \$		(23) \$	
(9) \$		(24) \$	
(10) \$		(25) \$	
(11) \$		(26) \$	
(12) \$		(27) \$	
(13) \$		(28) \$	
(14) \$		(29) \$	
(15) \$		(30) \$	

TOTAL

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



*Schedule Y*  
*Quarterly Debt Service Schedule*

Date	#	Principal	Interest	Total
12/1/09	41	8,258.06		8,258.06
3/1/10	42	8,258.06		8,258.06
6/1/10	43	8,258.06		8,258.06
9/1/10	44	8,258.06		8,258.06
12/1/10	45	8,258.06		8,258.06
3/1/11	46	8,258.06		8,258.06
6/1/11	47	8,258.06		8,258.06
9/1/11	48	8,258.06		8,258.06
12/1/11	49	8,258.06		8,258.06
3/1/12	50	8,258.06		8,258.06
6/1/12	51	8,258.06		8,258.06
9/1/12	52	8,258.06		8,258.06
12/1/12	53	8,258.06		8,258.06
3/1/13	54	8,258.06		8,258.06
6/1/13	55	8,258.06		8,258.06
9/1/13	56	8,258.06		8,258.06
12/1/13	57	8,258.06		8,258.06
3/1/14	58	8,258.06		8,258.06
6/1/14	59	8,258.06		8,258.06
9/1/14	60	8,258.06		8,258.06
12/1/14	61	8,258.06		8,258.06
3/1/15	62	8,258.06		8,258.06
6/1/15	63	8,258.06		8,258.06
9/1/15	64	8,258.06		8,258.06
12/1/15	65	8,258.06		8,258.06
3/1/16	66	8,258.06		8,258.06
6/1/16	67	8,258.06		8,258.06
9/1/16	68	8,258.06		8,258.06
12/1/16	69	8,258.06		8,258.06
3/1/17	70	8,258.06		8,258.06
6/1/17	71	8,258.06		8,258.06
9/1/17	72	8,258.06		8,258.06
12/1/17	73	8,258.06		8,258.06
3/1/18	74	8,258.06		8,258.06
6/1/18	75	8,258.06		8,258.06
9/1/18	76	8,258.06		8,258.06
12/1/18	77	8,258.06		8,258.06
3/1/19	78	8,258.06		8,258.06
6/1/19	79	8,258.06		8,258.06
9/1/19	80	8,258.06		8,258.06
12/1/19	81	8,258.06		8,258.06
3/1/20	82	8,258.06		8,258.06
6/1/20	83	8,258.06		8,258.06
9/1/20	84	8,258.06		8,258.06
12/1/20	85	8,258.06		8,258.06
3/1/21	86	8,258.06		8,258.06
6/1/21	87	8,258.06		8,258.06
9/1/21	88	8,258.06		8,258.06

SPECIMEN

*Schedule Y*  
*Quarterly Debt Service Schedule*

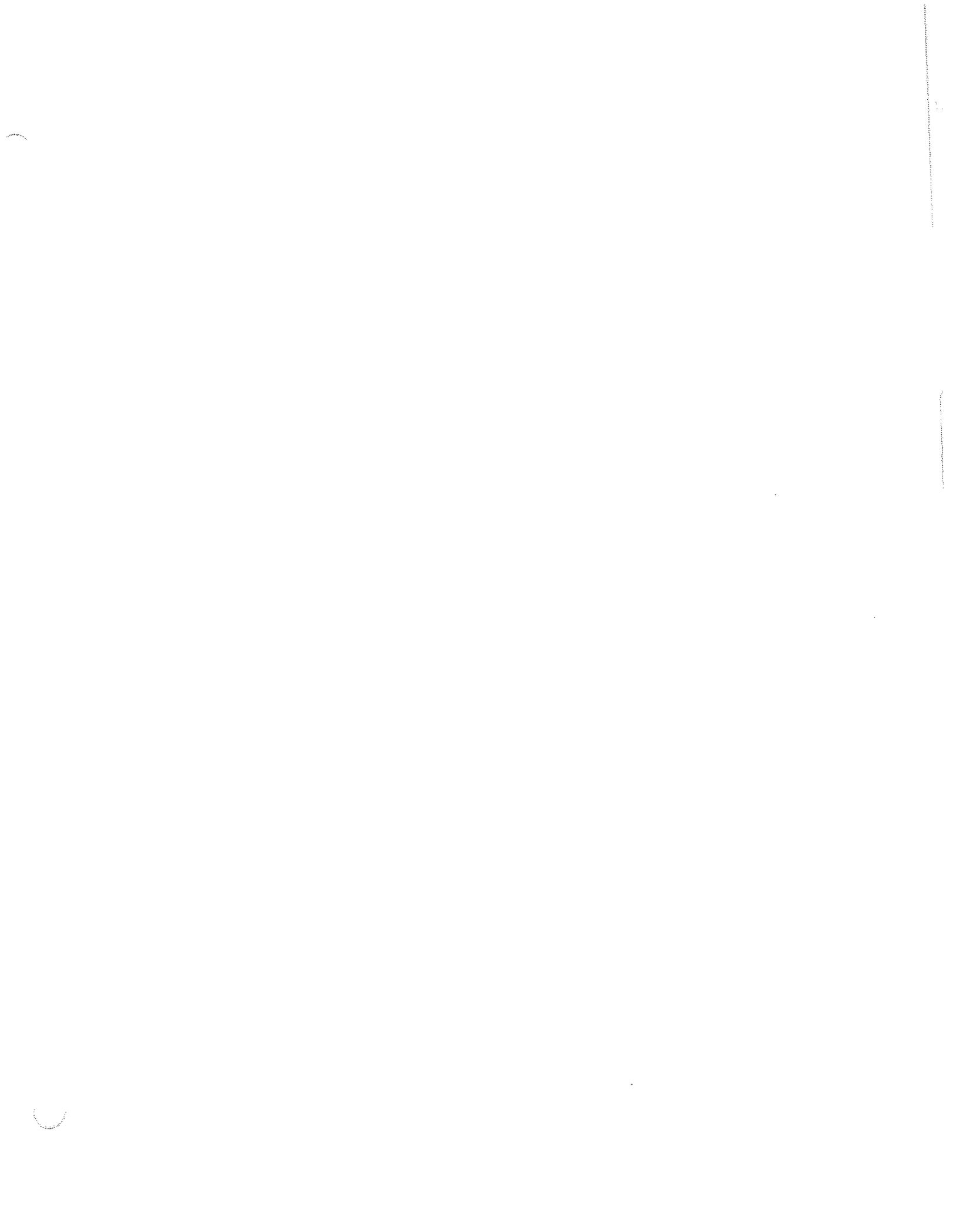
Date	#	Principal	Interest	Total
12/1/21	89	8,258.06		8,258.06
3/1/22	90	8,258.06		8,258.06
6/1/22	91	8,258.06		8,258.06
9/1/22	92	8,258.06		8,258.06
12/1/22	93	8,258.06		8,258.06
3/1/23	94	8,258.06		8,258.06
6/1/23	95	8,258.06		8,258.06
9/1/23	96	8,258.06		8,258.06
12/1/23	97	8,258.06		8,258.06
3/1/24	98	8,258.06		8,258.06
6/1/24	99	8,258.06		8,258.06
9/1/24	100	8,258.06		8,258.06
12/1/24	101	8,258.06		8,258.06
3/1/25	102	8,258.06		8,258.06
6/1/25	103	8,258.06		8,258.06
9/1/25	104	8,258.06		8,258.06
12/1/25	105	8,258.06		8,258.06
3/1/26	106	8,258.06		8,258.06
6/1/26	107	8,258.06		8,258.06
9/1/26	108	8,258.06		8,258.06
12/1/26	109	8,258.06		8,258.06
3/1/27	110	8,258.06		8,258.06
6/1/27	111	8,258.06		8,258.06
9/1/27	112	8,258.06		8,258.06
12/1/27	113	8,258.06		8,258.06
3/1/28	114	8,258.06		8,258.06
6/1/28	115	8,258.06		8,258.06
9/1/28	116	8,258.06		8,258.06
12/1/28	117	8,258.06		8,258.06
3/1/29	118	8,258.06		8,258.06
6/1/29	119	8,258.06		8,258.06
9/1/29	120	8,258.06		8,258.06
12/1/29	121	8,258.06		8,258.06
3/1/30	122	8,258.06		8,258.06
6/1/30	123	8,258.06		8,258.06
9/1/30	124	8,258.06		8,258.06
12/1/30	125	8,258.06		8,258.06
3/1/31	126	8,258.06		8,258.06
6/1/31	127	8,258.06		8,258.06
9/1/31	128	8,258.06		8,258.06
12/1/31	129	8,258.06		8,258.06
3/1/32	130	8,258.06		8,258.06
6/1/32	131	8,258.06		8,258.06
9/1/32	132	8,258.06		8,258.06
12/1/32	133	8,258.06		8,258.06
3/1/33	134	8,258.06		8,258.06
6/1/33	135	8,258.06		8,258.06
9/1/33	136	8,258.06		8,258.06

SCHEDULE Y

*Schedule Y*  
*Quarterly Debt Service Schedule*

Date	#	Principal	Interest	Total
12/1/33	137	8,258.06		8,258.06
3/1/34	138	8,258.06		8,258.06
6/1/34	139	8,258.06		8,258.06
9/1/34	140	8,258.06		8,258.06
12/1/34	141	8,258.06		8,258.06
3/1/35	142	8,258.06		8,258.06
6/1/35	143	8,258.06		8,258.06
9/1/35	144	8,258.06		8,258.06
12/1/35	145	8,258.06		8,258.06
3/1/36	146	8,258.06		8,258.06
6/1/36	147	8,258.06		8,258.06
9/1/36	148	8,258.06		8,258.06
12/1/36	149	8,258.06		8,258.06
3/1/37	150	8,258.06		8,258.06
6/1/37	151	8,258.06		8,258.06
9/1/37	152	8,258.06		8,258.06
12/1/37	153	8,258.06		8,258.06
3/1/38	154	8,258.06		8,258.06
6/1/38	155	8,258.76		8,258.76
		1,280,000.00		1,280,000.00

SCHEDULE



RESOLUTION APPROVED BY ATTORNEY IN CHARGE  
FOR PSD - INSURED LOAN - ONE BOND

BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT  
LINCOLN COUNTY, WEST VIRGINIA

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF FACILITIES FOR THE DISTRIBUTION OF WATER WITHIN THE SAID DISTRICT AND, TO THAT END, AUTHORIZING THE ISSUANCE OF A REVENUE BOND IN THE TOTAL PRINCIPAL AMOUNT OF \$180,000.00; SETTING FORTH THE TERMS AND CONDITIONS OF SAID BOND; PROVIDING FOR THE PAYMENT OF SAID BOND AS TO PRINCIPAL AND INTEREST AND ESTABLISHING THE SECURITY THEREFORE; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SAID BOND; AUTHORIZING THE ISSUANCE OF ADDITIONAL BOND UNDER SPECIFIED CONDITIONS; AND FOR OTHER PURPOSES

WHEREAS, Branchland-Midkiff Public Service District (hereinafter sometimes called the "District") in Lincoln County, West Virginia, has heretofore been duly created and is now organized and operating under the provisions of West Virginia Code, Chapter 16, Article 13A, and the Public Service Board of said District has heretofore been organized and is now functioning as the governing body of the said District, having the duties, powers and authority as provided by said law; and,

WHEREAS, the Public Service Board of said District (hereinafter sometimes called the "Board") has heretofore determined the necessity and advisability of constructing a water distribution system (herein sometimes called "Water-works System") within said District in order to supply adequate water facilities for said District and its inhabitants for agricultural, industrial, public, and private uses; and,

WHEREAS, under the provisions of said West Virginia Code, Chapter 16, Article 13A, said District is authorized and empowered to construct and operate such Water-works System, and to issue a revenue bond payable as hereinafter provided for the revenues derived from such operation for the purpose of providing funds for such construction; and,

WHEREAS, the district has been approved for a development grant from the Farmers Home Administration in the amount of \$165,000.00, and desire and intend that provisions be made in and by this resolution for the issuance of a single revenue bond in the total amount of \$180,000.00, which will be used with the grant funds to pay the costs of the Water-works System, and to provide for the payment of said bond and interest thereon and to set forth the conditions and restrictions upon which such bond and any additional bonds ranking on a parity therewith are to be made and may be issued and outstanding; and,

WHEREAS, the Board has determined to secure insurance for the payment of the principal and interest of said bond by the United States of America, acting through the Farmers Home Administration, U. S. Department of Agriculture (hereinafter called the "Government") pursuant to the provisions of the Consolidated Farmers Home Administration Act of 1961, and accordingly to provide herein those covenants and provisions required therefor by the Government; the Board having further determined that, in the absence of such insurance by the Government, the District is unable to obtain sufficient credit elsewhere to finance the Water-works System taking into consideration prevailing private and cooperative rates and terms currently available;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Public Service Board of the Branchland-Midkiff Public Service District of Lincoln County, West Virginia, as follows:

SECTION 1. Necessity. It is hereby found to be necessary that Branchland-Midkiff Public Service District provide a portion of the financing for construction of the Water-works System which will be comprised of 153,000 gallon steel reservoirs with attendant pumps, valves and other equipment, and distribution lines and appurtenances necessary thereto, as set forth with particularity

in plans prepared by J. H. Milam, Inc., Consulting Engineer, a copy of which is on file in the office of the District.

SECTION 2. Ratification. That all action heretofore taken (not inconsistent with the provisions of this resolution) by the Board directed toward construction of the Water-works System and toward the issuance of the District's revenue bond for that purpose, be, and the same hereby is ratified, approved, and confirmed.

SECTION 3. Authorization of Water-works System. That the construction of the Water-works System to serve the District shall be, and the same is hereby ordered to be undertaken at a total cost of not exceeding \$350,000.00 to be defrayed with the proceeds of the District's revenue bond issued pursuant to this resolution.

SECTION 4. (a) Authorization of Revenue Bond. For the purpose of defraying a portion of the cost of constructing the Water-works System, it is hereby declared necessary that the Board make and issue, and there is hereby authorized to be issued, pursuant to the applicable provisions of Article 13A, Chapter 16, West Virginia Code of 1961, one fully registered Series A bond, without coupon, bearing interest at a rate not to exceed 3-3/4 % per annum payable annually, to be sold in such manner and at such time found by the Board to be most advantageous, in the total principal amount of \$180,000.00, and in substantially the form set forth below, payable both as to principal and interest solely out of the net income derived from the operation of the Water-works System, and the Board pledges irrevocably, but not necessarily exclusively, such net income to the payment of this bond and the interest thereon, the proceeds therefor to be used solely for the purpose of constructing the Water-works System.

urd.

(b) Enforcement Rights of Holder. The holder of the bond shall have the right by suit, action, mandamus or other appropriate proceeding to complete performance of the duties undertaken by the District in connection with the issuance of the bond and the duties of the District imposed by Article 13A (Section 17) Chapter 16, West Virginia Code of 1961.

(c) Tax Exemption. The bond and interest thereon shall be exempt from the taxation by the State of West Virginia and any other taxing bodies of that State, Article 13A (Section 21) Chapter 15, West Virginia Code of 1961.

(d) Redemption Rights. Bond will be noncallable prior to maturity during the first five years from the date of the issuance of said bond. Thereafter any bond may be callable for retirement on any interest due date by payment of its principal amount plus accrued interest thereon by giving notice by certified mail to the registered owner of the bond not less than 30 days prior to the redemption date or so long as the bond is insured by the Government by notice mailed at least 40 days prior to the date fixed for redemption to the Director, Finance Office, Farmers Home Administration, United States Department of Agriculture, 1520 Market Street, St. Louis, Missouri, 63103, or such other place as the Government may designate.

SECTION 5. Revenue Bond Registration. The bond is fully negotiable, but shall be registered in the names of the holder in a book maintained for that purpose in the office of the holder in of the Public Service Board of the District, such registration being noted thereon by the Secretary as Bond Registrar, after which no transfer shall be valid unless made on said books and similarly noted on the bond.

SECTION 6. Covenants Pertaining to Government Insurance. In order to secure and maintain for the benefit of the holder of

the revenue bond insurance by the Government of the payment of the principal and interest by the Government of the Payment of the principal and interest, thereof, and for so long as the bond is outstanding and is so insured, the Board covenants that:

(a) It will pay to the Government the insurance charge in accordance with the provisions of the Consolidated Farmers Home Administration Act of 1961 and the applicable regulations of the Farmers Home Administration;

(b) It will cause to be printed on the bond insured by the Government such form of notice of insurance endorsement as shall be specified by the Government and it will comply with all terms and conditions of such insurance endorsement and the applicable regulations of the Farmers Home Administration.

(c) In the event the Government shall make any advances required to meet payments on the bond insured by it, or the payment of insurance premiums or other advances which may be required to protect the Government's security interest, the Board will pay in addition to the interest of the unpaid bond, interest on all such advances or expenditures in connection therewith made by the Government, at the same per annum rate specified in the bond. All such advances, expenditures and interest thereon shall be deemed payable upon demand immediately after any such expend by the Government. Any such amounts due the Government by the Board shall take priority over any other payments from the Bond Fund Payments set forth in Section 133 hereof;

(d) It will take any and all such action as may be requested by the Government and it will execute such other agreements and instruments as the Government may from time to time prescribe to enable the Government to discharge its responsibilities as insurer and collection agent for the holder of the bond insured by the Government; and,

ard.

(e) If at any time it shall appear to the Government that the board is able to call for redemption or refund the bond by obtaining a loan for such purpose from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, or by other means, the Board will, upon request of the Government, redeem, refund, or apply for and accept such loan in sufficient amount to repay the Government or the holder of the bond, or both, and will take all actions as may be required in connection with such redemption or refund.

SECTION 7. Execution. The revenue bond shall be signed by the Chairman of the Board, sealed with the corporate seal of the District, and attested by the Secretary of the Board.

SECTION 8. Security. The revenue bond shall be secured by a statutory mortgage lien on the Water-works System as provided by Chapter 16, Article 13A, West Virginia Code. The Revenues of the Water-works System, including all additions, extensions, improvements, and replacements thereof and thereto, are pledged to the Bond Fund hereinafter established after there have been first paid from such revenues the current expenses of the District.

SECTION 9. Revenue Bond Form. The bond issued and sold pursuant to this resolution shall be in substantially the following forms:

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF LINCOLN  
BRANCHLAND-MIDKIFF PUBLIC SERVICE DISTRICT  
WATER-WORKS SYSTEM REVENUE BOND  
SERIES A  
\$180,000.00

Branchland-Midkiff Public Service District (herein sometimes referred to as the "District") in the County of Lincoln, State of West Virginia, a lawfully created and existing public corporation and political subdivision of the State of West Virginia, for value received, hereby promises to pay United States of America, Farmers Home Administration (hereinafter sometimes called the "Payee"), or registered assigns, the principal sum of \$180,000.00 plus interest on the unpaid principal balance at the rate of three and three-fourths (3 3/4%) percent per annum. The said principal and interest installment shall be payable in the following installments on or before the following dates: \$ 888.00 on the first day of January 196 7, \$ 6,750.00 on the first day of January, 196 8 and \$ 8,962.00 annually thereafter on the first day of January until the principal and said interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable forty (40) years from the date of this bond.

For so long as payment of this bond is insured by the United States of America, acting through the Farmers Home Administration, U. S. Department of Agriculture (herein called the "Government") for the benefit of the registered holder, payment of the principal and interest shall be made through the Government as collection agent for the registered holder at the office of

the County Supervisor, Farmers Home Administration, U. S. Department of Agriculture, serving Lincoln County, West Virginia, or at such other place as may be designated by the Government by written notice addressed and mailed to the Board by certified mail at least 40 days prior to an interest due date.

This bond does not in any manner constitute an indebtedness of the District within the meaning of any constitutional or statutory limitation and is payable and collectible solely out of the net income derived from the operation of the District's Water-works system. Payment of this bond and the interest thereon shall be made solely from, and as security for such payment thereon pledged, pursuant to a resolution adopted and approved 31st August 1966, a special fund identified as the "Branchland-Midkiff Public Service District Revenue Bond and Interest Sinking Fund", into which the Board covenants to pay from the revenue derived from the operation of its Water-works System after provision only for all necessary and reasonable expenses of the operation and maintenance of said Water-works System, sums sufficient to pay when due the principal of and the interest on this bond, and to create and maintain a reasonable and specified reserve for such purpose. For a description of said funds and the nature and extent of the security afforded thereby for the payment of the principal of and the interest on this bond, and to create and maintain a reasonable and specified reserve for such purpose, reference is made to said resolution. A statutory mortgage lien upon the Water-works System of the District is created by the West Virginia Code, Chapter 16, Article 13A in favor of the registered owner of this bond, which lien is hereby recognized as valid and binding and shall remain in effect until the payment in full of the principal of and interest on this bond. Bonds in addition to this bond, subject to designated conditions, may be issued and made payable

from said net revenues of the Water-works System and having a lien thereon on a parity with the lien, of said bond in accordance with the provisions of said resolution.

The District covenants and agrees with the registered holder of this bond and each and every person who may become the owner hereof that it will keep and perform all of the covenants of said resolution, including, without limiting the generality of the foregoing, its covenant against the sale or mortgage of said Water-works System or any part thereof and including its covenant that it will fix, maintain and collect rates for services rendered by said Water-works System sufficient to produce revenues or earnings sufficient to pay the annual operation and maintenance expenses, the cost of a repair and replacement fund, and the principal of and interest on the bond and any other obligations payable from the revenues of said Water-works System, including the reserves provided by said resolution.

On and after five years from the date of said bond the District shall have the right to call the bond for retirement on any interest due date by payment of the entire principal amount of said bond plus accrued interest thereon by giving 30 days notice of the call of the bond by certified mail to the registered owner of the bond, or so long as the bond is insured by the Government by notice mailed at least 40 days prior to the date fixed for redemption to the Director, Finance Office, Farmers Home Administration, United States Department of Agriculture, 1520 Market Street, St. Louis, Missouri, 63103, or to such other address as the Government may designate.

If and for so long as payment of principal and interest of this bond is insured by the Government, each successive holder of this bond shall be conclusive presumed to have appointed and accepted the the Government as his collection agent to receive, and receipt in the Government's name for, payments of interest on and

principal of this bond. As between the holder and the District, for the purposes of the provisions of this bond and the authorizing resolution, such insurance by the Government shall be conclusively presumed to be and remain in effect so long as a notice of insurance endorsement, executed by the Government, appears on the back of this bond, or until a designated effective date of cancellation of such insurance specified in a cancellation executed by the Government.

This bond is exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

This bond is transferrable as provided in the resolution by the registered holder hereof only upon books kept by the Bond Registrar.

It is hereby certified, recited, and declared that all acts, conditions, and things required to exist, happen and be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form and manner as required by law, that the amount of this bond, together with all obligations of the District, does not exceed any limits prescribed by the Constitution and statutes of the State of West Virginia, and that a sufficient portion of the net operating income of the Water-works System of the District has been pledged to and will be set aside into the Bond Fund for the prompt payment of the installment of the principal of and interest on this bond.

IN WITNESS WHEREOF, Branchland-Midkiff Public Service District has caused this bond to be signed by the Chairman of its Public Service Board and its corporate seal to be hereunto affixed and attested by the Secretary of said Board, all as of the 15th day of December, 1966.

Branchland-Midkiff Public Service  
District

By:

Chairman of its Public Service  
Board.

Branchland, W. Va. 25506

57-22-697850

(CORPORATE SEAL)

Secretary of its Public  
Service Board

NOTICE OF INSURANCE BY THE UNITED STATES OF AMERICA

Payment of interest on and principal of this bond is insured by the United States of America, acting through the Farmers Home Administration, U. S. Department of Agriculture, as evidenced by and in accordance with the terms of a contract of insurance executed by the United States on the same date as this notice of insurance. Executed by the United States of America through its undersigned duly authorized officer, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 \_\_\_\_\_  
 FARMERS HOME ADMINISTRATION

REGISTRATION

(No writing below except by the Bond Registrar)

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of Bond Registrar</u>
<u>December 15, 1966</u>	<u>UNITED STATES OF AMERICA FARMERS HOME ADMINISTRATION</u>	<u>J. O. MTDORFF [Signature]</u>
_____	_____	_____
_____	_____	_____

Section 10. Disposition of Revenue Bond Proceeds.

A. Construction Account. That the proceeds derived from the sale of the bond herein authorized, and grants received from the United States of America and any other funds received for acquiring and construction of the Water-works System shall be deposited promptly upon receipt thereof in a separate account in

a bank or banks which are members of the Federal Deposit Insurance Corporation, designated by the Board, and approved by the Government, which account shall be known as the "Branchland-Midkiff Public Service District Revenue Bond Construction and Acquisition Account". At the time for the deposit of the funds in the bank, the Board, the Bank, and the County Supervisor of the Farmers Home Administration at Hamlin, West Virginia, shall execute a deposit agreement on Form FEA 402-1, "Deposit Agreement"; the construction account shall be a joint account and any withdrawal of funds therefrom shall be subject to the countersignature of the County Supervisor of the Farmers Home Administration pursuant to the terms of that agreement. The proceeds of the bonds in excess of \$10,000.00 shall be secured by such bank in accordance with U. S. Treasury circular No. 176 before such proceeds are deposited. The moneys in the construction account, except as herein otherwise specifically provided, shall be used and paid out solely for the purpose of acquiring and constructing the Water-works System only upon warrants or checks drawn and signed by the Chairman of said District and its Treasurer and the counter-signature of the FMA County Supervisor. No such warrant for any sum for any actual construction work or purchase of construction materials pursuant to terms and provisions of construction contracts shall be issued until the board has received engineering approval certifying that such sum is due and owing for work under such contracts, nor until the Board has adopted a resolution accepting such certificate and directing the drawing of such warrant or check. The designated approval shall be by the consulting engineer whose approval must be in the form of a written certificate stating that the payment therein approved is being made to pay for materials supplied or work satisfactorily completed in substantial accordance with the plans and specifications for the work involved. Such certificates of

approval shall be in appropriate form, shall be signed by the engineer or his duly accredited representative, and shall be filed with the Secretary of the Board prior to the time such payment or payments are authorized by resolution.

With respect to nonconstruction costs and expenses, such as purchase of land, easements, rights-of-way, legal fees, and other acquisition expenses, etc., no such warrant in payment thereof shall be issued except upon approval of the Board.

B. Disposition of Construction Account Residue. That when all work of constructing and purchasing the Water-works System shall have been completed in accordance with such plans and specifications and all amounts due therefore shall have been paid, the consulting engineer shall file with the depository bank a certificate so stating, thereupon (1) any funds representing grant funds shall be disbursed in accordance with the grant agreement between the District and the FHA and (2) any other funds remaining in the Construction Account shall be deposited in the Reserve Fund required by Section 13C hereof.

Section 11. Fiscal Year. The Fiscal year of the District shall begin on the 1st day of January in each year and shall end on the 31st day of December.

Section 12. Revenue Fund. That so long as a bond herein authorized remains unpaid, either as to principal or Water-works System shall be set aside and deposited in an insured bank into the special fund which is hereby created, and which shall be set aside and deposited in an insured bank into the special fund which is hereby created and which shall be known as the "Branchland-Midkiff Public Service District Revenue Fund".

Section 13. Administration of Revenue Fund. That so long as any bond hereby authorized and issued remains unpaid, either as to principal or interest, or both, the following payments shall be made from the Revenue Fund:

A. Operation and Maintenance Fund. As a first charge on the Revenue Fund, there shall be set aside each month as a operation and maintenance fund for the Water-works System such sums as the Board shall determine in accordance with an approved budget to be necessary for operation and maintenance expenses. Any surplus remaining at the end of the fiscal year and not needed for operation and maintenance fund and be used for the purpose of such fund.

B. Bond Fund. Subject to the provisions of Paragraph A of this Section 13, and as a second charge on said Revenue Fund, there shall be deposited into a bank account hereby created and to be known as the "Branchland-Midkiff Public Service District Revenue Bond and Interest Sinking Fund", the following:

(1) Monthly, commencing as soon as revenues are available from the Water-works System, an amount which together with equal subsequent monthly deposits will provide a sum equal to the amount necessary to pay the next maturing installment of principal and interest on the bond hereby authorized.

C. Reserve Fund. Subject to the provisions of Paragraphs A and B of this Section 13, and as a third charge on the said Revenue Fund, there shall be transferred monthly a sum at least equal to not less than twenty percent (20%) of the total amount deposited monthly into the Bond Fund as provided by Paragraph B (1) of this Section 13, into a separate fund hereby created to be known as the "Branchland-Midkiff Public Service District Water-works System Revenue Bond Reserve Fund." Until a reserve has been accumulated in an amount equal to not less than NINE THOUSAND and NO/100 ——— dollars (\$ 9,000<sup>00</sup> ) herein designated as the "Minimum Reserve", and thereafter such amount or amounts, if any, shall be deposited monthly from any moneys

remaining in the Revenue Fund into the Reserve Fund necessary to maintain the Reserve Fund as a continuing reserve in an amount not less than the specified minimum reserve to meet possible deficiencies in the Bond Fund. No payment need be made into the Reserve Fund so long as the moneys therein shall equal not less than the minimum reserve. The moneys in the Reserve Fund shall be accumulated and maintained as a continuing reserve and shall be used only to prevent deficiencies in the payment of the principal of or interest on the bond hereby authorized resulting from the failure to deposit into the Bond Fund sufficient funds to pay said principal and interest as the same shall accrue.

D. Defraying Delinquencies in Bond Fund. If, in any month, the Board shall, for any reason, find it necessary to use money from the Reserve Fund to pay any installment of principal or of interest on said bond, the money so used shall be replaced in the Reserve Fund from the first revenues thereafter received from the operation of the system not required to be otherwise applied. If, in any month, the Board shall, for any reason, fail to pay into the Bond Fund, the full amount above stipulated from the Revenue Fund, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first revenues thereafter received from the operation of the system not required to be otherwise applied. The moneys in the Bond Fund shall be used solely and only for the purpose of paying the principal of and the interest on the bond issued hereunder; provided, however, that any moneys at any times in excess of the Minimum Reserve provided in the Reserve Fund may be withdrawn therefrom and used as herein provided in the Reserve Fund may be withdrawn therefrom and used as herein provided for the prepayment of installments on the bond hereby authorized.

E. Repair and Replacement Fund. After satisfying the requirements of paragraphs A, B, C and D of this Section 13, from

any money then remaining in the Revenue Fund, there shall be deposited into an account to be known as "Branchland-Midkiff Public Service District Water-works System Repair and Replacement Fund", not less than \$ 80<sup>00</sup> monthly until such Repair and Replacement Fund equals \$ 9,000<sup>00</sup>. Withdrawals may be made from said Replacement and Repair Fund only for the purpose of repairs, replacements of equipment and expenditure necessary to the efficient operation of the system. In the event funds in the Bond Fund (Section 13B hereof) and Reserve Fund (Section 13C hereof) should be reduced below this amount required to meet the current debt service plus the said reserve of \$ 9,000<sup>00</sup>, the funds on deposit in the Repair and Replacement Fund may be transferred to the Bond Fund to the extent required to eliminate the deficiency in said Bond Fund.

F. Payment for Additional Obligations. Any balance remaining in the Reserve Fund, after making the payments herein-after provided, may be used by the Board for the payment of interest on the principal of additional bonds or other obligations hereafter authorized to be issued and payable from the revenues of the Water-works System, including reasonable reserves therefore, as the same accrue; provided that the lien of such additional bonds or other obligations on the net income and revenues of the Water-works System and the pledge thereof for the payment of such additional obligations shall be on a parity with, or subordinate to, the lien and pledge of the bond herein authorized, as hereinafter provided.

G. Places and Times of Deposits. Each of the funds and accounts hereinabove designated in Section 12 and 13 hereof, shall be maintained and kept separate from all other funds and accounts in an insured bank, each monthly payment shall be made into the proper fund and account not later than the fifteenth day of each month, except that when the fifteenth day of any month shall be a

Sunday or a legal holiday, then such payment may be made on the next succeeding secular day.

H. Fiscal Year Budget. Prior to December 1st of each year beginning <sup>Sund</sup> December 1st, 1968, the Board will prepare a budget for the ensuing fiscal year of the Water-works System covering prospective revenues and receipts, operation and maintenance expenses, and deposits to be made during such fiscal year in the Bond Fund (Section 13E), the Reserve Fund (Section 13C), and the Repair and Replacement Fund (Section 13E). A copy of such budget will be forwarded promptly to the State Director of the Farmers Home Administration or other official designated by the Government and a copy will be made available to any holder of the bond who shall request the same.

Section 14. Additional Bonds.

A. Approved by Government. That the District shall not incur any additional indebtedness to be paid from a pledge of the revenue of the Water-works System, without the prior written approval of the State Director of the Farmers Home Administration for the State of West Virginia, so long as any part of the Bond issue under this resolution remains unpaid.

B. Limitations upon Issuance of Parity Obligations. That nothing in this resolution contained shall be construed in such a manner as to prevent the issuance of parity obligations but so long as the bond hereby authorized is insured by the Government, with prior approval of the State Director of the Farmers Home Administration, by the District of additional bonds or other obligations payable from the income or any revenues derived from the operation of the Water-works System and constituting a lien upon said revenues on a parity with, but not prior nor superior to, the lien of the bond herein authorized, or to prevent the issuance of bonds or other obligations refunding all or a part of

the bond herein authorized, provided, however, that the Board is not, and has not been in default as to any payments required to be made in Section 13 hereof for a period of not less than twenty-four months immediately preceding the issuance of such additional bonds or other obligations, or if the bond herein authorized has not been issued and outstanding for a period of twenty-four months, for the longest period the bond herein authorized has been issued and outstanding; and provided, that before any such additional parity bond or other parity obligations are authorized or actually issued, other than refunding bonds or other refunding obligations (unless any lien on any revenues of the Water-works System of the obligations refunded is subordinate to the lien of the bond herein authorized), the annual earnings derived from the operation of the Water-works System for the fiscal year immediately preceding the date of the issuance of such additional parity obligations shall have been sufficient to pay the costs of operation and maintenance of the Water-works System for said fiscal year, and, in addition, sufficient to pay an amount representing one hundred fifty percent (150%) of the average annual principal and interest requirements (herein referred to as the "debt service" requirements) on the then outstanding revenue bonds and other obligations of the District payable from the revenues of the Water-works System; and provide further, that the estimated average annual earnings of said Water-works System for the life of the then outstanding revenue bonds and the proposed revenue bonds, all payable from the revenues of the Water-works System, shall have been sufficient to pay the estimated average annual costs of operation and maintenance of the Water-works System for the life of both the then outstanding and the proposed revenue bonds, and, in addition, sufficient to pay an amount representing one hundred fifty percent (150%) of the debt service requirement of the then outstanding revenue bonds

combined with the debt service requirements of the proposed additional revenue bonds; provided, further, that the annual earnings derived from the operation of the Water-works System need not equal 150% of the debt service requirements of the outstanding and the proposed additional revenue bonds or other obligations in the event the Government is the purchaser or the insurer of any such additional bond or obligations.

C. Certification and Estimation of Earnings. A written certification by a Certified Public Accountant that said obligation, when adjusted as hereinafter provided, is sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the District to authorize, issue, sell and deliver said additional bonds or other obligations on a parity with the bond herein authorized. Any necessary estimate of further earnings of the Water-works System shall be prepared by a consulting engineer.

D. Consideration of Additional Expenses. In determining whether or not additional parity bonds or other parity obligations may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in operation and maintenance expenses that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the said bonds or other obligations.

E. Junior Obligations Permitted. Nothing herein contained shall be construed so as to prevent the District from issuing bonds or other obligations payable from the revenues of the Water-works System and having a lien thereon subordinated, inferior and junior to the lien of the bond authorized to be issued by this resolution; provided, however, that so long as the bond authorized hereby is insured by the Government prior written consent shall be obtained from the State Director of the Farmers Home Administration.

F. Superior Obligations Prohibited. Nothing herein contained shall be construed so as to permit the District to issue bonds or other obligations payable from the revenues of the Water-works System and having a lien thereon prior and superior to the bond herein authorized to be issued.

Section 15. Refunding Bonds. That the provisions of Section 14 hereof are subject to the exception that if at any time after the bonds or other obligations herein or hereafter authorized, or any part thereof shall have been issued, the Board shall find it desirable to refund said bonds or other obligations, said bond or other obligations or any part thereof, may be refunded (but only with the consent of the holder or holders thereof, unless the bond or other obligations have matured, or are then callable for prior redemption, and have been properly called), without changing the priority of the lien for the payments of the refunding obligations on the revenues of the Water-works System, except as provided in Paragraph B of Section 14 hereof; and the refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of said bonds or other obligations which is not refunded, of any there be; and the holder or holders of the refunding bonds or other obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of the bond or other obligations refunded thereby; provided, however that if only a part of the outstanding bond or other obligations is refunded in such a manner that the interest rate thereof is increased or if any refunding obligation matures at an earlier date than the maturity date of the corresponding obligations refunded thereby, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of said obligation; and that the refunding bonds or other obligations shall either be sold for cash at not less than the par value and accrued

interest, and the proceeds thereof shall be used to pay the obligations refunded, or is so permitted by law, and then only with the consent of the holder or holders of the obligations refunded, the refunding obligations shall be delivered dollar for dollar in exchange for the bonds of other obligations refunded.

Section 16. Protective Covenants. That the District hereby covenants and agrees with each and every holder of the bond issued hereunder;

A. Use of Bond Proceeds. That the District will proceed without delay, to acquire and construct the Water-works System, as herein above provided.

B. Use Charges. That while the bond authorized herein remains outstanding and unpaid, the rates for all services rendered by the Water-works System to all consumers within or without the Boundaries of the District shall be reasonable and just, taking into account and consideration the cost and value of the water-works System and the proper and necessary allowance for the depreciation thereof and the amounts necessary for the retirement of the bond and other securities or obligations payable from the revenues of the system, the accruing interest thereon, and reserves therefore; and there shall be charged against all purchasers of service, such rates and amounts as shall be adequate to meet the requirements of this and the preceding sections hereof, and which shall be sufficient to produce revenues or earnings annually to pay the annual operation and maintenance expenses, the costs of all essential replacements and repair, the principal of and interest on the revenue bond, and any other obligations payable from the revenues thereof, plus reserves therefore, all of which revenues derived from the operation of the Water-works System shall be subject to distribution in accordance with provisions of Section 13 and that no fee service or facilities shall be furnished by the Water-works System to anyone.

C. Levy of Charges. That the District will, prior to the delivery of the Revenue Bond herein authorized, fix, establish and levy the rates and charges which are required by Section 16B hereof. No reduction in the initial rate schedule for the Water-works System may be made unless:

(1) The District has fully complied with all of the provisions of Section 12 and 13 of this resolution for at least the full calendar year immediately preceding such proposed reduction of the initial rate schedule; and,

(2) The Reserve Fund provided in Section 13 has been built up to the required minimum reserve of \$ 9,000<sup>00</sup>, and the Repair and Replacement Fund provided in Section 13E has been built up to the required minimum of \$ 9,000<sup>00</sup>; and,

(3) The audit required to be made by the Certified Public Accountant by Section 16G of this resolution for the full fiscal year immediately preceding such proposed rate reduction discloses that the estimated revenues which would result from the proposed rate schedule will be sufficient to produce adequate revenues or earnings annually to pay the annual operation and maintenance expenses, the costs of all essential replacements and repairs to the Water-works System, the principal of and interest on the Revenue Bond, and any other obligations payable annually from the revenues of the Water-works System, and provides payment for the reserve fund required by this resolution; and,

(4) The prior written approval of the State Director of the Farmers Home Administration has been obtained, so long as the revenue bond issued hereunder is insured by the Government.

D. Efficient Operation. That the District will operate the Water-works System, so long as the bond herein authorized is outstanding, will maintain said Water-works System in efficient operating condition and will make such improvements, extensions,

enlargements, repairs and betterments thereto as may be necessary or advisable to insure its economical and efficient operation at all times.

E. Records. That so long as the Bond remains outstanding proper books of record and account will be kept by the District separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the system. Such books shall include (but not necessarily be limited to) monthly records showing:

- (1) The number of customers
- (2) The total revenues received from charges to customers
- (3) A detailed statement of the expenses of the system

F. Right to Inspect. That any holder of the bond, or any duly authorized agent or agents of such holder or representative of Farmers Home Administration, shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, and to inspect the system and all properties comprising the system.

G. Audits. That the District further agrees that it will, within sixty days following the close of each fiscal year, cause an audit of such books and accounts to be made by a Certified Public Accountant, showing the receipts and disbursements for the account of the Water-works System, and that such audit will be available for inspection by any holder of the bond. Each audit in addition to whatever matters may be thought reasonable, should include in detail the financial condition and records of the District and the Water-works System, including the rates, number and type of connections and the status of the several funds herein before created, and a list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer

and the expiration date of the policy. All expenses incurred in the making of the audits and reports required by this section shall be regarded and paid as a maintenance and operation expense. The District agrees to furnish forthwith a copy of each of such audit and report to the State Director of the Farmers Home Administration and to any bond holder upon request after each such audit and report has been prepared, and that any such holder shall have the right to discuss with the accountant or person taking the audit and report the contents thereof and to ask for such additional information as he may reasonable require.

H. Billing procedure. That all bills for water service or facilities furnished by or through the Water-works System shall be rendered to customers monthly and shall be due on the date rendered. Ten percent (10%) shall be added to the net amount of each bill not paid in full within ten (10) days after the date of the bill; and in the event said bills are not paid within sixty (60) days after the date rendered, water and water service shall be discontinued, and the rates and charges due shall be collected in a lawful manner. The District shall have a lien on each lot or parcel of land served by said water-works System for charges imposed for all service rendered by said Water-works System. Notice of such liens shall be filed and liens shall be enforced as provided by the laws of West Virginia.

I. Charges and Liens, Revenues and Water-works. That from the revenues of the Water-works System, the District will pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied, assessed upon or in respect to said Water-works System, or any part thereof, when the same shall become due, and it will duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the Water-works System; and the District will not create or suffer to be created any lien or charge upon the Water-

works System or upon the revenues therefrom except as permitted by this resolution, and it will make adequate provision to satisfy and discharge within sixty days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects, which if unpaid, might by law become a lien upon the Water-works System or upon the revenues therefrom; provided, however, that nothing herein shall require the District to pay or cause to be discharged, or make provision for any such taxes assessed, lien or charge before the time when payment thereof shall be due or so long as the validity thereof shall be contested in good faith by appropriate legal proceedings.

J. Insurance. That the district, in its operation of the Water-works System, will carry fire and extend coverage insurance, workman's compensation insurance, if required by State law, and public liability insurance and other types of insurance in such amounts and to such extent as is normally carried by private corporations operating public utilities of the same type. The cost of such insurance shall be considered one of the operation costs of the system. In the event of property loss or damage, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged, and remainder shall be treated as net income, and shall be subject to distribution in the manner provided hereinabove in Section 13 hereof, for net income and revenues derived from the operation of the system.

K. Competing System. That as long as the bond hereby authorized is outstanding, the District shall not permit (except as it may legally be required to do so) any person, association, firm or corporation to distribute and sell domestic water, water service or facilities, to any consumer, public or private, within the area served by the water-works System.

L. Alienating System. That the District will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner

dispose of, or otherwise alienate, the Water-works System, or any part thereof, including any and all extensions and additions that may be made thereto, until the bond herein authorized to be issued shall have been paid in full, both principal and interest, except that so long as the bond is insured by the Government, the District, with the prior written approval of the State Director of the Farmers Home Administration, may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the system, but in no manner nor to such extent as might prejudice the security for the payment of the bond herein authorized, provided, however, that in the event of any sale as aforesaid the proceeds of such sale shall be distributed as net income of the system in accordance with the provisions of Section 13 hereof.

M. Surity Bonds. That each official or other person having custody of any funds derived from operation of the Water-works System or responsible for their handling, shall be bonded for the full faithful performance of his duties in an amount at least equal to the total funds in his custody at any one time. The costs of each such bond shall be considered one of the operating costs of the Water-works System. The surety Company shall be approved by the Farmers Home Administration, and the United States of America shall be named as co-obligee.

N. Competent Management. That the District shall employ experienced and competent management personnel for the Water-works System. In the event of default on the part of the District in paying principal for interest on said bond promptly as it falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of sixty days, or if the net revenues of the system in any fiscal year should fail to equal at least the amount of the principal of and interest on the revenue bond and other obligations (including all

reserves therefore specified in this resolution) payable from said net revenues in that fiscal year, the District shall retain a firm of competent management engineers skilled in the operation of water systems to assist the management of the Water-works System so long as such default continues or the net revenues are less than the amount hereinabove designed.

O. Performing Duties. That the District will faithfully and punctually perform all duties with respect to the Water-works System required by the Constitution and laws of the State of West Virginia and the resolution of the District, including but not limited to the making and collecting of reasonable and sufficient rates and charges for services rendered or furnished by the system as hereinbefore provided, and the proper segregation of the revenues of the Water-works System and their application to the respective funds.

P. Other Liens. That other than as provided by this resolution, there are not liens or encumbrances of any nature whatsoever, on or against the Water-works System or the revenues derived or to be derived from the operation thereof.

Q. District's Existence. That in order to insure the completion of the Water-works System, and to protect the holder of the bond, the District will require that the contractor, to whom is given any contract for construction appertaining to the Water-works System, furnish to the District a completion bond or bonds satisfactory to the District and the Government, and that any sum or sums derived from such completion bond or bonds shall be used within six months after such receipt for the completion of said construction, and if not so used within such period, shall be placed in and be subject to the provisions of the Revenue Fund provided for herein.

Section 17. Events of Default. That each of the following events is hereby defined as an "event of default;"

A. Nonpayment of Principal and/or Interest. If payment of any bond when due or interest of the bond herein authorized to be issued shall not be made when the same shall become due and payable, or within 30 days thereafter.

B. Incapable to Perform. If the District shall for any reason be rendered incapable of fulfilling its obligations hereunder.

C. Default of any Provision. If the District shall make default in the due and punctual performance of its covenants or conditions, agreements and provision contained in the bond and in this resolution on its part to be performed, and if such default and requiring the same to be remedied shall have been given to the District by the holder of the bond.

Section 13. Remedies for Defaults. That upon the happening and continuance of any of the events of default as provided in Section 17 of this resolution, then and in every case the Government as insurer of the bond may proceed against the District, its governing body, and its agents, officers and employees to protect and enforce the rights of the holder of the bond under this resolution by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award of execution of any power herein granted for the enforcement of any power, legal or equitable remedy as may be deemed most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any such right or to require the governing body of the District to act as if it were the trustee of an expressed trust, or any combination of such remedies. Any receiver appointed in any proceedings to protect said rights the consent to any such appointment being hereby expressly granted, may enter and take possession of the

Water-works System, operate and maintain the same, prescribe rates, fees or charges and collect, receive and apply all revenues arising after the appointment of such receiver in the same manner as the District itself might do. The failure to do so shall not relieve the District or any of its officers, agents or employees of any liability for failure to perform any duty. Each such right or privilege of the bondholder (or trustee thereof) is an addition and cumulative to any other right or privilege shall not be deemed a waiver of any other right or privilege thereof.

Section 19. Compensation of Board Members. The District hereby covenants and agrees that the total annual salaries to be paid to the members of its Board shall not exceed \$ 500<sup>00</sup>, the said amount of \$ 500<sup>00</sup> to be allocated to the Board members by resolution enacted by the Board. The District further covenants and agrees that the aggregate salaries paid to all employees shall not exceed the amount paid for similar work to employee of comparable water systems.

Section 20. Amendment of Resolution. That this resolution may be amended or supplemented by resolution adopted by the Board in accordance with the laws of the State of West Virginia, but no such amendment or supplement by way of resolution or otherwise shall be adopted so long as the bond is insured by the Government without the prior written consent of the State Director of the Farmers Home Administration.

Section 21. "Equal Opportunity for Employment". In the letting of construction contracts and otherwise as may be applicable, the District covenants that it will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor, and for that purpose, the Chairman and Secretary are hereby authorized and directed to require compliance therewith, and, to that end, to execute such documents as may be required by representatives of the Government.

Section 22. Severability Clause. That if any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not effect any of the remaining provisions of this resolution.

Section 23. Repealer Clause. All resolutions and orders or parts thereof in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed.

Section 24. Resolution a Contract Subject to Enabling Acts and Regulations. The provisions of this resolution are subject to the West Virginia Code, Chapter 15, Article 13A, and the applicable regulations of the Farmers Home Administration and shall constitute a contract between the District and the Government so long as the bond is insured by the Government.

Section 25. Effective Date. This resolution shall be effective immediately upon its adoption.

Passed, ratified and adopted, in meeting duly assembled, this 31<sup>st</sup> day of August, 1966.

BRANCHLAND-MIDKIFF PUBLIC SERVICE  
DISTRICT

BY C. E. Parsons  
Chairman of its Public Service  
Board

(CORPORATE SEAL)

CERTIFICATION

I, J. O. Midkiff, Secretary of the Public Service District Board of the Branchland-Midkiff Public Service District, Lincoln County, West Virginia, do hereby certify that at a meeting of said Board duly called and held on the 31<sup>st</sup> day of August, 1966, the foregoing resolution was approved and adopted by the unanimous vote of all of the members of said Board.

Dated this 31<sup>st</sup> day of August, 1966.

J. O. Midkiff  
Secretary of the Board



§ 16-13-24

PUBLIC HEALTH

§ 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

Quoted in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

- | Sec.       |   | Sec.        |  |
|------------|---|-------------|--|
| 16-13A-1.  | Legislative findings.   | 16-13A-10.  | Budget.  |
| 16-13A-1a. | Jurisdiction of the public service commission.  | 16-13A-11.  | Accounts; audit.   |
| 16-13A-1b. | County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.  | 16-13A-12.  | Disbursement of district funds.  |
| 16-13A-1c. | General purpose of districts.   | 16-13A-13.  | Revenue bonds.   |
| 16-13A-2.  | Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state. | 16-13A-14.  | Items included in cost of properties.  |
| 16-13A-3.  | District to be a public corporation and political subdivision; powers thereof; public service boards.   | 16-13A-15.  | Bonds may be secured by trust indenture.   |
| 16-13A-3a. | Removal of members of public service board.   | 16-13A-16.  | Sinking fund for revenue bonds.  |
| 16-13A-4.  | Board chairman; members' compensation; procedure; district name.  | 16-13A-17.  | Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver. |
| 16-13A-5.  | General manager of board.   | 16-13A-18.  | Operating contracts.   |
| 16-13A-6.  | Employees of board.   | 16-13A-18a. | Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.   |
| 16-13A-7.  | Acquisition and operation of district properties.   | 16-13A-19.  | Statutory mortgage lien created; foreclosure thereof.  |
| 16-13A-8.  | Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.  | 16-13A-20.  | Refunding revenue bonds.   |
| 16-13A-9.  | Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.  | 16-13A-21.  | Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.   |
| 16-13A-9a. | Limitations with respect to foreclosure.  | 16-13A-22.  | Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.         |
|            |   | 16-13A-23.  | Validation of acts and proceedings of public service boards.   |
|            |   | 16-13A-24.  | Acceptance of loans, grants or temporary advances.   |
|            |   | 16-13A-25.  | Borrowing and bond issuance; procedure.  |

**Editor's notes.** — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

**Constitutionality of article.** — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**And purpose.** — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public service districts are "public utilities." 50 Op. Atty Gen. 447 (1963)

Hence, they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Atty Gen. 447 (1963).

Cited in Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am., 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 365 S.E.2d 395 (W. Va. 1987).

### § 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)

§ 16-13A-1a

PUBLIC HEALTH

**Purpose found in order creating district and in hearings.** — The purpose for the creation of a public service district may be ascertained by a review of the order establishing the district and the history behind the creation of the district (the notice of hearing and hearings held prior to the creation of the district). Op. Atty Gen., July 8, 1976.

The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provi-

sions of this article. Op. Atty Gen., June 27, 1973.

A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Cited in State ex rel. APCO v. Garner, 149 W. Va. 740, 143 S.E.2d 351 (1965); Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979).

§ 16-13A-1a. Jurisdiction of the public service commission.

The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:

- (a) To study, modify, approve, deny or amend the plans created under section one-b [§ 16-13A-1b] of this article for consolidation or merger of public service districts and their facilities, personnel or administration;
- (b) To petition the appropriate circuit court for the removal of a public service district board member or members; and
- (c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters. (1986, c. 81.)

§ 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and

Op. Att'y Gen., June 27,

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Co., 156 W. Va. 606, 195

APCO v. Gainer, 149 W.  
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the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "bureau of public health" for "department of health"; substituted "division of environmental protection" for "de-

partment of natural resources"; deleted "and regulations" following "rules" in the last sentence; and made stylistic changes.

### § 16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

### § 16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

The county commission of any county may, on its own motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in

such order a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section [June 6, 1986], no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules and regulations promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not such territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where such territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting.

Such petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if such territory is situated in more than one county, then such petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of such territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of such county at the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county commission of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service

district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, expanding, merging or consolidating the district: Provided, however,

That within ten days after the entry of an order creating, expanding or merging or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules and regulations relating to such filings and the approval, disapproval or modification of county commission orders for creating, expanding, merging or consolidating districts.

The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

**There is no unlawful delegation of legislative power** to the county courts (now county commissions) of this State under this section in violation of W. Va. Const., art. V, § 1, and art. VI, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**And there is no unconstitutional delegation of judicial functions to the county court** (now county commission) made by this section.

State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**District need not be created by general law.** — A public service district is a public corporation and does not come within the constitutional inhibition requiring all corporations to be created by general law. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Voters may not force referendum as to continuing or abolishing district.** — There

is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service district should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

**Certain provisions mandatory, but provisions for setting time of hearing and giving notice directory.** — The provisions of this section relating to the filing of the petition or motion of the county court (now county commission), the description of the territory to be embraced and like provisions are mandatory, but the use of the word "shall," in relation to the requirements for the posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**A county court (now county commission) has authority to add sewerage services to the facilities of a public service district which was created for the purpose of furnishing water services, under appropriate proceedings.** Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Relative powers of commission and voters in area.** — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and, that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlarge-

ment or reduction of such public service district, which action is not subject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and public referendum depending upon the number of qualified voters who protest such action. Op. Att'y Gen., Nov. 13, 1975.

**"Shall apply with like effect," etc.** — Because a protest against creation triggers a referendum, the language "shall apply with like effect as if a district were being created" can mean only that a protest against enlargement or reduction likewise triggers a referendum. Op. Att'y Gen., Nov. 13, 1975.

**Overlapping districts.** — Where there is no bond indebtedness outstanding to be paid by a public service district, the county commission creating a public service district may undertake to enlarge or reduce the areas of various overlapping districts or may even consolidate the overlapping districts into one district. Op. Att'y Gen., July 8, 1976.

**Merger or consolidation of districts.** — This section authorizes either merger or consolidation of public service districts. Op. Att'y Gen., June 12, 1985, No. 9.

A merger or consolidation results in one corporation which, in the case of merger, will be the corporation designated by the commissioners as the surviving corporation, and with respect to a consolidation, will be a new corporate entity. Op. Att'y Gen., June 12, 1985, No. 9.

Cited in State v. Neary, 365 S.E.2d 395 (W. Va. 1987).

### § 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district. Provided, That no contract shall extend beyond a

maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district, nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after such board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members become members of the board of the district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three; and the member or members appointed by the governing bodies of the cities, incorporated towns or other

PUBLIC SERVICE DISTRICTS

§ 16-13A-3

municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office. Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspec-

tion and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61.)

**Effect of amendment of 1994.** — The amendment, in the second paragraph, substituted "bureau of public health" for "department of health," and substituted "division of environmental protection" for "department of natural resources"; in the third paragraph, deleted "not" prior to "less than eighteen thousand," deleted "shall thereby" prior to "become members," and substituted "so appointed are" for "shall be and constitute"; deleted "and constitute" prior to "the board of the district" in the fourth paragraph; deleted "additional" prior to "member or members" in the fifth paragraph; deleted "and regulations" following "rules" in the seventh paragraph; deleted "the" prior to "same out on orders" in the penultimate paragraph; and made stylistic changes.

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

**Exemptions.** — Public service districts of West Virginia are political subdivisions of the State, and as such, they are specifically, by express statute, exempted from the duty of paying registration fees (provided by § 17A-10-8), the privilege tax (imposed by § 17A-3-4),

and the certificate of title charge (required by § 17A-3-4). 49 Op. Atty Gen. 131 (1961)

**Furnishing water to municipal corporation in another state.** — A public service district may furnish water wholesale in bulk quantities to a municipal corporation in another state. 51 Op. Atty Gen. 739 (1966)

**Authority of districts.** — Public service districts are agents of the county commission by which they were created, having no authority other than that expressly set out in this article. Op. Atty Gen., July 8, 1976

**Furnishing water to border residents in neighboring state.** — See Op. Atty Gen., June 26, 1975.

**Compensation of board members for performing additional duties prohibited.** — Board members of a public service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Atty Gen., July 14, 1988, No. 2.

Cited in State v. Neary, 365 S.E.2d 395 (W. Va. 1987).

**§ 16-13A-3a. Removal of members of public service board.**

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal. (1963, c. 75; 1971, c. 72; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

Quoted in State v. Neary, 365 S.E.2d 395 (W. Va. 1987).

**§ 16-13A-4. Board chairman; members' compensation; procedure; district name.**

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member shall receive fifty dollars per attendance at regular monthly meetings and thirty dollars per attendance at additional special meetings, total salary not to exceed nine hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed eighteen hundred dollars per annum; and for districts with two thousand customers or more, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed three thousand dollars per annum. The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules and regulations of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided by section three [§ 6-9A-3], article nine-a, chapter six of this code. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

§ 16-13A-5

PUBLIC HEALTH

Compensation of board members for performing additional duties prohibited.  
— Board members of a public service district could not be compensated for performing the

duties of treasurer and/or or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

§ 16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

§ 16-13A-6. Employees of board.

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees. (1953, c. 147; 1981, c. 124.)

§ 16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than five thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after

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PUBLIC SERVICE DISTRICTS

§ 16-13A-8

notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American-made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81.)

**§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.**

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders

of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124.)

**District may exercise control over sewers where ownership is unknown** unincorporated areas. 45 Op. Att'y Gen. 506 (1953).

**Valid grant of power of eminent domain.** — The grant of power of eminent domain to public service districts by this section is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Nuisance is element of just compensation.** — If a facility creates a nuisance this harm is simply an element of just compensation in an eminent domain proceeding. Sexton v. Public Serv. Comm'n, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Procedure for affixing compensable interests.** — Public service commission, in the absence of specific statutory authority, is not empowered to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. Sexton v. Public Serv. Comm'n, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, man-

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agement, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or

sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine [§ 16-1-9], article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and

operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61.)

**Effect of amendment of 1994.** — The amendment substituted "bureau of public health" for "department of health" throughout the section; deleted "and regulations" following "reasonable rules" in the first paragraph and following "all rules" in the second paragraph; and made stylistic changes.

**Lien not a deprivation of property without due process.** — The provision that delinquent fixed rates and charges for services rendered by a public service district shall be a lien on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes, does not deprive the owners of their property without due process of law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Requiring connections with sewer facilities.** — The boards of public service districts have no authority to require potential users who live outside the boundaries of the districts, but within the 10-mile limit, to hook onto the district's sewer facilities. *Op. Att'y Gen.*, July 8, 1976.

**Abandonment of private systems.** — Where a public service district requires a property owner, tenant, or occupant to connect onto its sewer system and to abandon a private sewer system located on the property, such person cannot recover from the public service district the value of the private system on the ground that such abandonment constitutes a taking of private property without just compensation within the meaning of W. Va. Const., art.

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PUBLIC HEALTH

III, § 9. Kingmill Valley Pub. Serv. Dist. v. Riverview Estates Mobile Home Park, 182 W. Va. 116, 386 S.E.2d 483 (1989).

Dist., 301 S.E.2d 601 W Va 1953 construing this section prior to 1950 and 1951 amendments.

**When duty arises.** — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. Rhodes v. Malden Pub. Serv.

**Sewage lagoons buffer-zone requirements.** — Public Service Commission did not err in finding that the proposed sewage lagoons site satisfied the buffer-zone requirements. Sexton v. Public Serv. Comm'n, 185 W Va 305, 423 S.E.2d 914, 1992.

§ 16-13A-9a. Limitations with respect to foreclosure.

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen (§§ 16-13A-9 or 16-13A-19) of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1982, c. 74.)

§ 16-13A-10. Budget.

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board. (1953, c. 147; 1981, c. 124.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

§ 16-13A-11. Accounts; audit.

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit

may be any audit by an independent public accountant completed within one year of the time required for the submission of the report: Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine (§ 6-9-1 et seq.), chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

#### § 16-13A-12. Disbursement of district funds.

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board. (1953, c. 147; 1981, c. 124.)

#### § 16-13A-13. Revenue bonds.

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty

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years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times. may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

*Cross references.* — Procedure for borrowing and issuing bonds, § 16-13A-25.

**§ 16-13A-14. Items included in cost of properties.**

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147.)

**§ 16-13A-15. Bonds may be secured by trust indenture.**

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

**§ 16-13A-16. Sinking fund for revenue bonds.**

At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions. (1953, c. 147.)

**§ 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.**

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the

operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to writ of mandamus, see Rule 81(a)(5).

As to effect of rules on jurisdiction and venue, see Rule 82.

**Mandamus.** — Mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to require a municipal corporation to comply with rate covenants in its rev-

enue bonds. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

Under this section, any holder of the bonds of the Union public service district shall have the right by mandamus to enforce and compel the performance of all the duties required by statute or undertaken by the district in connection with the issuance of bonds by such district. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

### § 16-13A-18. Operating contracts.

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the

resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1953, c. 147.)

**§ 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.**

In any case where a public service district owns a water, sewer or gas system, and all the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81.)

**§ 16-13A-19. Statutory mortgage lien created; foreclosure thereof.**

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

The provision granting to bondholders a

statutory mortgage lien is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**§ 16-13A-20. Refunding revenue bonds.**

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded. (1953, c. 147.)

The only purpose for refunding bonds is the retirement or refinancing of outstanding bond issues of a particular district. Op. Att'y Gen., July 8, 1976.

Combination of two outstanding bond issues into one refunding bond issue may well be restricted by the use of the singular

language in this section. Op. Att'y Gen., July 8, 1976.

Previous issuance of bonds required. — This section is clearly written in language which speaks only of refunding bonds issued by any district which has previously issued bonds. Op. Att'y Gen., July 8, 1976.

**§ 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.**

This article is full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article. Provided, That all functions, powers and duties of the public service commission of West Virginia, the bureau of public health, the division of environmental protection and the environmental quality board remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it are exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent. (1953, c. 147; 1986, c. 81; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "bureau of public health, the division of environmental protection and the environmental quality board" for "state department of health and the state water resources board"; deleted "declared" preceding "a public instrumentality"; and made stylistic changes.

Tax exemption constitutional. — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art. X, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955). Applied in Rhodes v. Malden Pub. Serv. Dist., 301 S.E.2d 601 (W. Va. 1983).

**§ 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.**

All acts and proceedings taken by any county court of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect [January 29, 1960], for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

*Editor's notes.* — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 16-13A-23. Validation of acts and proceedings of public service boards.**

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect [March 13, 1965], by any county court of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

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Editor's notes. — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

§ 16-13A-24. Acceptance of loans, grants or temporary advances.

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118.)

Permissible borrowing by public service districts. — The borrowing by public service districts of money from counties and/or municipalities, as evidenced by a note, is permissible borrowing under this section. Op. Att'y Gen., May 6, 1988, No. 27.

§ 16-13A-25. Borrowing and bond issuance; procedure.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of sections thirteen, twenty or twenty-four [ §§ 16-13A-13, 16-13A-20 or 16-13A-24 ] of this article, without the prior consent and approval of the public service commission. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions

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of chapter twenty-four [§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Sixty days prior to making formal application for said certificate, the public service district shall prefile with the public service commission its plans and supporting information for said project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of same;

(d) The anticipated rates which will be charged by the district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons therefor shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81.)

**Cross references.** — Class II legal advertisement defined, § 59-3-2.

**Certificate of necessity and convenience.** — Under this section, a public service district must first obtain a certificate of public convenience and necessity before it can acquire or construct public service property. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Eminent domain not subject to public**

**service commission review.** — Although construction of a new facility proposed by a utility will often require the taking of private property through eminent domain, in the absence of express statutory language, the public service commission has no duty to review and decide issues that are inherent in the eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

## ARTICLE 13B.

### COMMUNITY IMPROVEMENT ACT.

<p>Sec. 16-13B-1. Short title. 16-13B-2. Definitions. 16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.</p>	<p>Sec. 16-13B-4. Determination of need and feasibility of creating an assessment district. 16-13B-5. Notice to property owners before creation of assessment district and construction of project;</p>
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§ 16-9A-1

PUBLIC HEALTH

§ 16-9A-1. Legislative intent.

Secondary smoke as battery, 46 ALR5th 813. W. Va. Law Review. — Hall, "Secondhand

Smoke as an Issue in Child Custody/Visitation Disputes," 97 W. Va. L. Rev. 115 (1994).

§ 16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.

ALR references. — Secondary smoke as battery, 46 ALR5th 813. W. Va. Law Review. — Hall, "Secondhand

Smoke as an Issue in Child Custody/Visitation Disputes," 97 W. Va. L. Rev. 115 (1994).

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

Applicability. — Although the public service commission concluded that cities providing only sewer service are not covered by this section, which applies to municipalities that provide both water and sewer service, the dis-

trict court implicitly rejected the commission's interpretation. City of Charleston v. Public Serv. Comm'n, 57 F.3d 385 (4th Cir.), cert. denied. — U.S. —, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.

16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

Sec.

16-13A-4. Board chairman; members' compensation; procedure; district name.

16-13A-7. Acquisition and operation of district properties.

16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

16-13A-25. Borrowing and bond issuance; procedure.

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**§ 16-13A-1a. Jurisdiction of the public service commission.**

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 195 W. Va. 135, 464 S.E.2d 777 (1995).

**§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.**

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) on its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends,

and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be

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conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b] of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of

hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125.)

**Effect of amendment of 1995.** — The amendment added the subsection designations; in (a), rewrote the former first sentence as the present first two sentences; inserted "enlargement, reduction, merger, dissolution or consolidation" following "creation" throughout (c), (d), and (e); inserted "enlarge, reduce, merge, dissolve or consolidate" twice in (e); rewrote (f); in (g), substituted "create" for "establish" in the first sentence, deleted "with like effect as if a

district were being created" from the end of the second sentence, and substituted "enlargement" for "expansion" in the third sentence; and made stylistic changes.

**Editor's notes.** — Concerning the reference in (a) to "the effective date of this section," this language was added by Acts 1986, c. 81, which passed March 8, 1986, and became effective ninety days from passage.

**§ 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.**

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers a public service persons residing or work expense district. Each fully complete public service protection and become pecuniary contract or service shall a former minimum of board members appointed in Each city, population of entitled to ap or other mu thousand sha each addition representing shall be responsible governing board resolution or which entered members of members of rated towns exceeds three the member merger or co If no city population of the county appoint three district and become member proceedings board member If the number of cities, incorporated district is less than creating the board, who number of consolidation member or

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorpo-

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rated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board.

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The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159.)

**Effect of amendment of 1997.** — The amendment, in the third and fourth paragraphs, added "except in cases of merger or consolidation where the number of board members may equal five" at the end; in the fourth paragraph, inserted "and residing within the state of West Virginia" following "who are persons residing within the district"; in the fifth paragraph, inserted "except in the cases of merger or consolidation where the number of

board members may equal five" in the middle of the paragraph; in the seventh paragraph, added the third sentence; in the ninth paragraph, added the third and fourth sentences; and made stylistic changes.

**W. Va. Law Review.** — Fisher, "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?," 98 W. Va. L. Rev. 449 (1996).

#### § 16-13A-4. Board chairman; members' compensation; procedure; district name.

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member may receive seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member may receive one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum; for districts with two thousand customers or more, each board member may receive one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and for districts with four thousand or more customers, each board member may receive one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum. The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter. Board members may be reimbursed for all

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reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided by said section. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81; 1997, c. 159.)

**Effect of amendment of 1997.** — The amendment rewrote the second sentence; in the fourth sentence, deleted "and regulations" following "as provided for by the rules"; in the seventh sentence, substituted "as provided by

said section" for "as provided by section three, article nine-a, chapter six of this code"; added "and with the public service commission" at the end of the tenth sentence; and made stylistic changes.

§ 16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness

within the meaning of : but all such obligations from the operation of proceeds of bonds issued the purchase of material electrical energy or power years. (1953, c. 147; 19159.)

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In any case where and a majority of r service board there or rent such water, s water, sewer or gas adjacent public serv sewer or gas syste discretion, consider sale, leasing or ren a hearing before t advertisement in ( seq.), chapter fifty circulation in the publication to be r days prior to the sions of the count; by the public serv In the event of payment of all ou ratably distribut construction of su the actual amou of funds thereaft county in which t

within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159.)

**Effect of amendment of 1997.** — The amendment, in the second sentence, substituted "more than fifteen thousand dollars" for

"more than five thousand dollars"; and in the sixth sentence, made a stylistic change.

**§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

**W. Va. Law Review.** — Fisher, "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?," 98 W. Va. L. Rev. 449 (1996).

**Quoted in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist.,** 195 W. Va. 135, 464 S.E.2d 777 (1995).

**§ 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.**

In any case where a public service district owns a water, sewer or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately-owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located

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to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160.)

Effect of amendment of 1997. — The amendment, in the first paragraph, substituted "a majority of not less than sixty percent of" for

"all" preceding "the members of the public service board"; and rewrote the proviso.

§ 16-13A-25. Borrowing and bond issuance; procedure.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four [§ 16-13A-13, § 16-13A-20 or § 16-13A-24] of this article, without the prior consent and approval of the public service commission. The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, evidence of compliance with chapter five-g [§ 5G-1-1 et seq.] of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm in the past two years requiring engineering services; or (2) completion of a construction project within the past two years requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall prefile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

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(d) The anticipated Provided, That if the of rates "not to exceed

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(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159.)

**Effect of amendment of 1996.** — The amendment, in the second paragraph, substituted "Thirty days" for "Sixty days" and inserted "public service" preceding the second occurrence of "district"; inserted "public ser-

vice" in (d); and made stylistic changes.

**Effect of amendment of 1997.** — The amendment inserted the second and third sentences of the first paragraph.

## ARTICLE 13C.

### DRINKING WATER TREATMENT REVOLVING FUND ACT.

<p>Sec. 16-13C-1. Definitions. 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities. 16-13C-3. Drinking water treatment revolv-</p>	<p>Sec.  ing fund; duties of division of health and water development authority; set-aside accounts. 16-13C-4. Management of funds. 16-13C-5. Remedies to enforce payment. 16-13C-6. Construction of article.</p>
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**Effective dates.** — Acts 1997, c. 225, provided that the act take effect from passage (April 11, 1997).

#### § 16-13C-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Authority" means the water development authority provided for in section four (§ 22C-1-4), article one, chapter twenty-two-c of this code.

(2) "Capacity development" means the technical, managerial and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.