# BOONE COUNTY PUBLIC SERVICE DISTRICT

## Water Revenue Bonds, Series 2010 A
## (West Virginia Infrastructure Fund)

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# BOONE COUNTY PUBLIC SERVICE DISTRICT

## WATER REVENUE BONDS, SERIES 2010 A
## (WEST VIRGINIA INFRASTRUCTURE FUND)

## BOND RESOLUTION

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**BOONE COUNTY PUBLIC SERVICE DISTRICT**

RESOLUTION AUTHORIZING ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BOONE COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $1,062,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING 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 RESOLVED BY THE PUBLIC SERVICE BOARD OF BOONE COUNTY PUBLIC SERVICE DISTRICT:

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. Boone County Public Service District (the "Issuer") is a public service district and a public corporation and political subdivision of the State of West Virginia in Boone County of said State.

B. The Issuer presently owns and operates a public waterworks system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain improvements and extensions to the existing public waterworks system of the Issuer, consisting of a water line extension to serve approximately 181 new customers in the Turtle Creek/Corridor G area (collectively, the "Project") (the existing public waterworks systems of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds in the total aggregate principal amount of not more than $1,062,000 in a single series being the Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), (the "Series 2010 A Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Bonds prior to and during acquisition and construction of the Project and for a period not exceeding six months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2010 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), in form satisfactory to the respective parties (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding bonds or obligations of the Issuer which will rank on a parity with the Series 2010 A Bonds as to liens, pledge, source of and security for payment being the Issuer's: (i) Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated April 26, 2000, issued in the original aggregate principal amount of $2,130,000 (the "Series 2000 A Bonds"); and (ii) Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated April 26, 2000, issued in the original aggregate principal amount of $4,909,161 (the "Series 2000 B Bonds"); (collectively, the "Prior Bonds").

The Series 2010 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all respects. Prior to the issuance of the Series 2010 A Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of certain of the Holders of the Prior Bonds to the issuance of the Series 2010 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with the covenants of the Prior Bonds and the Prior Resolutions.

H. The Issuer will receive all of its revenues under and pursuant to an Agreement, dated October 28, 1996, as amended (the "Agreement"), by and between the Issuer and West Virginia-American Water Company (the "Company"), which Agreement has been approved by the Public Service Commission of West Virginia. The revenues to be paid by the Company to the Issuer under the Agreement will be sufficient to pay all costs of operation and maintenance of the System, to pay the principal of and interest, if any, on the Series 2010 A Bonds, and to make payments into all funds and accounts and other payments provided for herein.

I. The Company will obtain, and pay the fees associated with, letters of credit, surety bonds or other credit facilities to fund the Reserve Accounts (as hereinafter defined) for the benefit of the Commission, to be drawn upon in the event that at any time payments under the Agreement are inadequate to provide funds for the Issuer to make all payments required hereunder. In the event the Company will not obtain such letters of credit, surety bonds or other credit facilities, the Issuer shall obtain such letters of credit, surety bonds or other credit facility or fund the Reserve Accounts in the amounts required herein and in the Loan Agreement.

J. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System, and issuance of the Series 2010 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and

appeal of which will either have expired prior to the issuance of the Series 2010 A Bonds or such final order will not be subject to appeal or rehearing.

K. The Project has been reviewed and determined to be technically and financially feasible by the Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2010 A Bonds by those who shall be the 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 equal benefit, protection and security of the Registered Owners of any and all of such Series 2010 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein 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 hereof.

"Agreement" means initially, the Agreement, dated October 28, 1996, by and between the Issuer and the Company, as it may be amended from time to time, or any subsequent replacement or renewal Agreement, as approved by the Public Service Commission of West Virginia.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2010 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

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

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

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

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

"Bonds" means, collectively, the Series 2010 A Bonds and the Prior Bonds and any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

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

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

"Closing Date" means the date upon which there is an exchange of the Series 2010 A Bonds for all or a portion of the proceeds of the Series 2010 A Bonds from the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"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.

"Company" means the West Virginia-American Water Company, a West Virginia corporation.

"Consulting Engineers" means Potesta & Associates, Inc., Charleston, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System or portion thereof in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any other agency of the State of West Virginia that succeeds to the functions of the Council.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and 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.

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

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

"Grants" means all grant moneys received by the Issuer for the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined. The initial Gross Revenues anticipated to be received by the Issuer will be limited to the amounts payable by the Company to the Issuer under the Agreement.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"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 the System in the normal operation of its business and affairs.

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

"Letter of Credit" means, collectively, the letter of credit or letters of credit, surety bond or other credit facility obtained by the Company or the Issuer to fund the Reserve Accounts for the benefit of the Commission, and any subsequent replacement or renewal Letter of Credit.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into by and between the Issuer and the Authority, providing for the purchase of the

Series 2010 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 2010 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any.

"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 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 authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity designated as such for the Bonds in the Supplemental Resolution.

"Prior Bonds" means the Series 2000 A Bonds and Series 2000 B Bonds.

"Prior Resolution" means the resolutions authorizing the Prior Bonds.

"Project" means the Project as described in Section 1.02B 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, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

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

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

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

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

collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

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

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code or any predecessor to the Code.

"Reserve Accounts" means, collectively, the respective reserve accounts for Series 2010 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account.

"Revenue Fund" means the Revenue Fund established by Prior Resolution and continued hereby.

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

"Series 2000 A Bonds" means the Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) dated April 26, 2000, issued in the original aggregate principal amount of $2,130,000.

"Series 2000 B Bonds" means the Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund) dated April 26, 2000, issued in the original aggregate principal amount of $4,909,161.

"Series 2010 A Bonds" means the Water Revenue Bonds, Series 2010 A (West Virginia Water Development Authority), of the Issuer, authorized by this Resolution.

"Series 2010 A Bonds Construction Trust Fund" means the Series 2010 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2010 A Bonds Reserve Account" means the Series 2010 A Bonds Reserve Account established in the Series 2010 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 2010 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2010 A Bonds in the then current or any succeeding year.

"Series 2010 A Bonds Sinking Fund" means the Series 2010 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Series 2010 A Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2010 A Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2010 A Bonds, and not so included, may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2010 A Bonds or any other obligations of the Issuer, including, without limitation, any Sinking Fund or Reserve Account which may hereafter be established.

"System" means the complete waterworks system of the Issuer, as extended and improved by the Project, and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the waterworks system from any sources whatsoever.

"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 adoption hereof.

Additional terms and phrases are defined in this Resolution as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Chairman or the Secretary shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

## ARTICLE II

## AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of $3,239,663, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2010 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority and the Council.

The cost of the Project is estimated to be $3,239,663, of which approximately $1,062,000 will be obtained from proceeds of the Series 2010 A Bonds, approximately $1,500,000 will be obtained from a U.S. Army Corps of Engineers Grant, approximately $232,663 will be obtained from a grant from the Council; approximately $300,000 will be obtained from The County Commission of Boone County and approximately $145,000 will be from funds contributed by the Company.

## ARTICLE III

## AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2010 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2010 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued Series 2010 A Bonds of the Issuer. The Bonds shall be issued in as a single bond, designated as "Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund)," in the principal amount of not more than $1,062,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010 A Bonds remaining after capitalizing interest on the Series 2010 A Bonds, if any, shall be deposited in or credited to the Bond Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2010 A Bonds shall be issued in such principal amount; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2010 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2010 A Bonds, shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2010 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2010 A Bonds. The Series 2010 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall bear interest, if any, and shall be dated as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2010 A Bonds shall be executed in the name of the Issuer by the Chairman, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2010 A Bonds shall cease to be such officer of the Issuer before the Series 2010 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any such Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Bond Registrar; Authentication and Registration. The Bond Registrar with respect to the Series 2010 A Bonds shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 2010 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2010 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2010 A Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2010 A 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, in accepting the Series 2010 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2010 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2010 A Bonds.

The registered Series 2010 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging the Series 2010 A Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond 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 exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed

redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2010 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any 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 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2010 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2010 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2010 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2010 A Bonds shall be secured forthwith by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2010 A Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2010 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2010 A Bonds to the original purchasers upon receipt of the documents set forth below:

(i) If other than the Authority, a list of the names in which the Series 2010 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

(ii) A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2010 A Bonds to the original purchasers;

(iii) An executed and certified copy of the Bond Legislation;

(iv) An executed copy of the Loan Agreement;

(v) A copy of the Agreement;

(vi) A copy of the Letter of Credit; and

(vii) The unqualified approving opinion of bond counsel on the Series 2010 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2010 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Remainder of Page Intentionally Blank]

(FORM OF SERIES 2010 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: This ___ day of _____, 2010, that BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Boone County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), 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 as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20___ to and including _____ 1, 20____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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").

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 by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." 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"), a Bond Resolution duly adopted by the Issuer on _____, 2010, and a Supplemental Resolution duly adopted by the Issuer on _____, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), DATED APRIL 26, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,130,000 (THE "SERIES 2000 A BONDS"); AND (2) WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED APRIL 26, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,909,161 (THE "SERIES 2000 B BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Prior Bonds, unexpended proceeds of the Bonds and proceeds of the Letter of Credit (as defined in the Bond Legislation). Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, unexpended proceeds of the Bonds and proceeds of the Letter of Credit. Pursuant to the Bond Legislation, and as long as the Agreement (as defined in the Bond Legislation) is in place, 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 100% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds. In the event the Agreement is no longer in place, the Issuer has covenanted and agreed to adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and the Loan Agreement. In the event the Letter of Credit is terminated or reduced, the Issuer has covenanted and agreed to fund the Series 2010 A Bonds Reserve Account in the amounts required under the Bond Legislation and the Loan Agreement. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as

provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the 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 amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, BOONE COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL]

_____
Chairman

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2010.

THE HUNTINGTON NATIONAL BANK,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, 20___.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2010 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Chairman is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, 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, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the Council a schedule, the forms of which will be provided by the Authority and the Council, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE IV

## [RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by Prior Resolution) with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

(1) Revenue Fund (established by Prior Resolution); and

(2) Series 2010 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by Prior Resolution) with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Series 2000 A Bonds Sinking Fund (established by Prior Resolution);

(2) Series 2000 A Bonds Reserve Account funded with

Letter of Credit (established by Prior Resolution);

(3) Series 2000 B Bonds Sinking Fund (established by Prior Resolution);

(4) Series 2000 B Bonds Reserve Account funded with Letter of Credit (established by Prior Resolution);

(5) Series 2010 A Bonds Sinking Fund; and

(6) Series 2010 A Bonds Reserve Account (to be funded with Letter of Credit).

Section 5.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund all Operating Expenses of the System not otherwise paid by the Company pursuant to the Agreement.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the principal payments due on the Prior Bonds as required by Prior Resolution; and (ii) commencing 4 months prior to the first date of payment of principal of the Series 2010 A Bonds, for deposit in the Series 2010 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2010 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2010 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Series 2010 A Bonds Reserve Account shall be funded with the Letter of Credit. In the event the Letter of Credit is terminated or reduced, the Issuer shall be required to

fund the Series 2010 A Bonds Reserve Account in the amounts required under the Loan Agreement, unless such requirement is waived by the Authority and the Council.

(4) So long as the Letter of Credit is in place, no Renewal and Replacement Fund shall be required for the Series 2010 A Bonds and Prior Bonds. In the event the Letter of Credit is terminated or reduced, the Issuer shall be required to establish a Renewal and Replacement Fund in the amounts required under the Loan Agreement, unless such requirement is waived by the Authority or the Council.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not permitted to be retained therein may be used to prepay installments of the Series 2010 A Bonds or for any lawful purpose of the System.

Moneys in the Series 2010 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2010 A Bonds, as the same shall become due. Moneys in the Series 2010 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2010 A Bonds as the same shall come due, when other moneys in the Series 2010 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2010 A Bonds Sinking Fund 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 Bond Construction Trust 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 payment, if any, due on the Series 2010 A Bonds, and then to the next ensuing principal payment due thereon.

As and when additional Bonds are issued ranking on a parity with the Series 2010 A Bonds, provision shall be made for additional payments into the sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional parity Bonds.

The Issuer shall not be required to make any further payments into the Series 2010 A Bonds Sinking Fund when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2010 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments, if any, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2010 A Bonds and the Prior Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2010 A Bonds Sinking Fund and the Series 2010 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2010 A Bonds Sinking Fund and the Series 2010 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2010 A Bonds Sinking Fund and the Series 2010 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2010 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve account payments with respect to the Series 2010 A Bonds 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 Bond Legislation. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form, together with a copy of its payment check, to the Authority by the 5th day of such calendar month.

C. 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 the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. 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 debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 2010 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2010 A Bonds, there shall first be deposited with the Commission in the Series 2010 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2010 A Bonds for the period commencing on the date of issuance of the Series 2010 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. The remaining moneys derived from the sale of the Series 2010 A Bonds shall be deposited with the Depository Bank in the Series 2010 A Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2010 A Bonds.

C. The Depository Bank shall act as a trustee and fiduciary for the Bondholders with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of such funds set forth in the Bond Legislation.

Section 6.02. Disbursements From the Bond Construction Trust Fund. To make disbursements from the Series 2010 A Bonds Construction Trust Fund, the Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments of all Costs of the Project from the proceeds of the Series 2010 A Bonds shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2010 A Bonds Construction Trust Fund shall be made only after submission to and approval from the Council, of a certificate, signed by an Authorized Officer stating that:

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

(b) 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) Each of such costs has been otherwise properly incurred; and

(d) Payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Series 2010 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of construction of the Project, as certified by the Consulting Engineers, and all costs of the Project have been paid, any remaining proceeds of the Series 2010 A Bonds shall be applied as directed by the Council.

The Issuer shall expend all proceeds of the Series 2010 A Bonds within 3 years of the date of issuance of the State's general obligation bonds, the proceeds of which were used to make the loan to the Issuer.

## ARTICLE VII

## ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation 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 Series 2010 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2010 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2010 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2010 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2010 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2010 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues, Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2010 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2010 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Company has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The Company and the Issuer have received the Commission Order of the Public Service Commission of West Virginia dated March 25, 2009, Commission Corrective Order dated March 25, 2009 and Commission Further Corrective Order dated April 1, 2009 in Case No. 08-0900-W-42T approving the rates and charges for the services of the System. The time for appeal of such Order has expired prior to the date hereof without any appeal The Issuer hereby adopts such rates and charges.

So long as the Series 2010 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth

in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2010 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer 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 and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the Council, 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 fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2010 A Bonds, immediately be remitted to the Commission for deposit in the respective Sinking Funds, and, with the written permission of the Authority and the Council, 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 of and interest, if any, on the Series 2010 A Bonds. Any balance remaining after the payment of the Series 2010 A Bonds and interest, if any, 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 duly adopted, 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 Revenue Fund or if the Renewal and Replacement Fund is created hereunder, then 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, in writing, determine upon consultation with a professional engineer 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 in accordance with the laws of the State. 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 consent of the Council and the Authority, be remitted to the Commission for deposit in the Sinking Funds. Payment of such proceeds

into the Sinking Funds, the Revenue Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

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 of the Bonds then Outstanding. 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 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and Section 7.07 hereof, 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 Series 2010 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2010 A 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, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2010 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

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 Series 2010 A Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2010 A Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

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 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations of parity obligations set forth in the Prior Resolution shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2010 A Bonds pursuant to this Bond Legislation, except with the prior written consent of the Authority and the Council under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2010 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions and improvements to the System or refunding any outstanding Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the payments from the Company under the Agreement shall not be less than 100% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The 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.

In the event the Agreement is no longer in place, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The 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 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 issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public 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.

All covenants and other provisions of this Bond Legislation (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 Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2010 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2010 A Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, 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 Bond Legislation.

Section 7.08. Books; Records and Audit. 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 and the Council, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they 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 grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the

System at all reasonable times following completion of construction and commencement of operation 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 Bond Legislation 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 and as prescribed by the Public Service Commission of West Virginia. 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 Council, the Authority, or any other original purchaser of the Series 2010 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2010 A Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net 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 Bond Legislation, and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations outstanding.

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 (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2010 A Bonds, and shall submit said report to the Council and the Authority, or any other original purchaser of the Series 2010 A Bonds. Such audit report submitted to the Authority and the Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues

of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer 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 by the Consulting Engineers. 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 Issuer.

The Issuer shall permit the Authority and the Council, or their 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 and commencement of operation of the Project, the Issuer shall also provide the Authority and the Council, or their 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 Purchaser, the Authority and the Council with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2010 A Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 100% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2010 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2010 A Bonds. In the event the Agreement is no longer in place, the Issuer shall comply with the requirements of Sections 4.1(b)(ii) and 5.2 of the Loan Agreement. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. In the event the Agreement is no longer in place, the Issuer shall annually, at least 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 and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof. 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 a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the Council and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority and the Council and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers 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 as submitted to the Authority and the Council, 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 engineering services satisfactory to the Authority and the Council 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 engineer shall certify to the Authority, the Council 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 shall employ qualified operating personnel properly certified by the

State to operate the System during the entire term of the Loan Agreement. To the extent operation and maintenance is performed by the Company, the Issuer shall enforce the Agreement to fulfil compliance with this covenant.

The Issuer shall serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

Section 7.12. 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 7.13. 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 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 the water 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. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. 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 7.15. Insurance and Construction Bonds.

A. The Issuer hereby covenants and agrees that so long as the Series 2010 A 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 Revenue Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Revenue 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) WORKER'S 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 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, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the Issuer shall verify such insurance prior to commencement of construction. 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 7.16. 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 7.17. Completion, Operation and Maintenance of Project; Permits and Orders. The Issuer shall complete or cause to be completed under the Agreement 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 federal and state requirements and standards. The Issuer shall take all steps to properly operate and maintain the System and make the necessary replacements due to normal wear and tear so long as the Series 2010 A Bonds are outstanding. To the extent operation and maintenance is performed by the Company, the Issuer shall enforce the provisions of the Agreement to fulfill compliance with this covenant. Pursuant to the Agreement, the Company has agreed to operate and maintain the System at its own expense.

The Issuer has obtained all permits 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 and the Council necessary for the financing, acquisition and construction of the Project, the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect.

Section 7.18. Reserved.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2010 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2010 A Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 7.20. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the Council with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the Council or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 7.21. Securities Laws 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 report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.22. Contracts; Change Orders; Public Releases.

A. The Issuer shall, simultaneously with the delivery of the Series 2010 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Authority and the Council for written approval. The Issuer shall obtain the written approval of the Authority and the Council before expending any proceeds of the Series 2010 A Bonds held in "contingency" as set forth in the Schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Authority and Council before expending any proceeds of the Series 2010 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

## INVESTMENT OF FUNDS; USE OF PROCEEDS

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested 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 Bond Legislation, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

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 bond 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, or more often as reasonably requested by the Issuer, 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 Series 2010 A Bonds are Outstanding.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2010 A Bonds as a condition to issuance of the Series 2010 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2010 A Bonds as may be necessary in order to maintain the status of the Series 2010 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2010 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by

the Authority or the Council, as the case may be, from which the proceeds of the Series 2010 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the Council, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Bonds and any additional information requested by the Authority.

## ARTICLE IX

## DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2010 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2010 A Bonds or any Prior Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2010 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2010 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar or any other Paying Agent or a Holder of a Bond; or

(3) 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 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner 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 such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2010 A 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 Registered Owners of the Series 2010 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2010 A Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2010 A Bonds shall be on a parity with the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2010 A Bonds may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and 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 with respect to such Bonds, any Registered Owner of the Series 2010 A Bonds 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 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 Series 2010 A Bonds 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 Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or 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 exercise.

Whenever all that is due upon the Series 2010 A Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or 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 Bond Legislation 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 or 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 Registered Owners of the Series 2010 A 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 completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the 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 X

## PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2010 A 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 Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2010 A Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010 A 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 Registered Owners of the Series 2010 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2010 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest 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 respectively pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Series 2010 A Bonds, required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2010 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. 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, the Supplemental Resolution, or the Series 2010 A Bonds.

Section 11.04. 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 11.05. Notices. All notices to be sent to the Issuer, the Company, the Authority, or the Council shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

Boone County Public Service District
P.O. Box 287
Danville, West Virginia 25053
Attention: Chairman

COMPANY:

West Virginia-American Water Company
P. O. Box 1906
Charleston, West Virginia 25327-1906
Attention: President

AUTHORITY:

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

COUNCIL:

West Virginia Infrastructure Council
180 Association Drive
Charleston, West Virginia 25311-1571
Attention: Executive Director

All notices to be sent to the Issuer hereunder shall also be sent to the Company, and all notices to be sent to the Council hereunder, shall also be sent to the Authority.

Section 11.06. Conflicting Provisions Repealed. All orders or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between the resolution and the Prior Resolution, the Prior Resolution shall control (unless less restrictive) so long as the Prior Bonds are outstanding.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 11.08. Effective Date. This Resolution shall take effect immediately upon adoption.

[Remainder of Page Intentionally Blank]

Adopted this 4th day of October, 2010.

Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of BOONE COUNTY PUBLIC SERVICE DISTRICT on the 4th day of October, 2010.

Dated: October 14, 2010.

[SEAL]

Secretary

09.29.10
091620.00002



CH5355668

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF BOONE COUNTY PUBLIC SERVICE DISTRICT; AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING LETTERS OF CREDIT TO FUND THE RESERVE ACCOUNT; APPROVING THE AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Boone County Public Service District (the "Issuer"), has duly and officially adopted a bond resolution, effective October 4, 2010 (the "Resolution") entitled:

RESOLUTION AUTHORIZING ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BOONE COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $1,062,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE

RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING 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.

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

WHEREAS, the Resolution provides for the issuance of Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund) of the Issuer (the "Series 2010 A Bonds"), in the aggregate principal amounts not to exceed $1,062,000, and has authorized the execution and delivery of the loan agreement relating to the Series 2010 A Bonds, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement"), all in accordance with Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Resolution it is provided that the form of the Loan Agreement and the exact principal amounts, dates, maturity dates, redemption provisions, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Issuer and the Company have agreed to amend the Operation and Maintenance Agreement dated October 28, 1996, by entering into the Third Amendment to Agreement dated October 14, 2010 (the "Amendment to Agreement");

WHEREAS, the Company has provided a Letter of Credit, dated October 4, 2010, in the amount of $55,180 (the "Letter of Credit") to fund the Series 2010 A Bonds Reserve Account;

WHEREAS, the Loan Agreement, the Amendment to Agreement and the Letter of Credit have been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and entered into by the Issuer, that the Amendment to Agreement and the Letter of Credit be approved, that the exact principal amounts, the dates, the maturity dates, the redemption provisions, the interest rates, the interest and principal

payment dates and the sale prices of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF BOONE COUNTY PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $1,062,000. The Series 2010 A Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2050, and shall bear no interest. The principal of the Series 2010 A Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2012, to and including September 1, 2050, and in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2010 A Bonds. The Series 2010 A Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2010 A Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Resolution.

Section 3. The Issuer does hereby authorize, ratify, approve and accept the Loan Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Council and the Authority.

Section 4. The Issuer does hereby authorize, ratify, approve and accept the Amendment to Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Amendment to Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

Section 5. The Issuer does hereby approve the Letter of Credit and the issuance of the Letter of Credit to fund the Reserve Account for the Series 2010 A Bonds, and hereby agrees that the Authority may hereafter require that the Reserve Account be funded in the amount required under the Resolution and the Loan Agreement in the event the Letter of Credit is reduced or terminated.

Section 6. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Resolution and does approve and accept the Registrar's Agreement

to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

Section 7. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Resolution.

Section 8. The Issuer does hereby appoint and designate Boone County Bank, Madison, West Virginia, to serve as Depository Bank under the Resolution.

Section 9. Series 2010 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2010 A Bonds Sinking Fund as capitalized interest.

Section 10. Series 2010 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2010 A Bonds Reserve Account. The Series 2010 A Bonds Reserve Account shall be funded with the Letter of Credit in the stated amount of $55,180.

Section 11. The balance of the proceeds of the Series 2010 A Bonds shall be deposited in or credited to the Bonds Construction Trust Fund as received from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Series 2010 A Bonds and related costs.

Section 12. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds hereby and by the Resolution approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about October 14, 2010.

Section 13. The acquisition and construction of the Project, and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 14. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Resolution held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts, until further directed by the Issuer. Moneys in the Sinking Fund shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 4th day of October, 2010.

Chairman

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of BOONE COUNTY PUBLIC SERVICE DISTRICT on the 4th day of October, 2010.

Dated: October 14, 2010.

[SEAL]

Secretary

09.29.10
091620.00002



CH5355711

IC-1
(08/09)

# 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").

BOONE COUNTY PUBLIC SERVICE DISTRICT
(2007W-975)

(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 acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of 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

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

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

## ARTICLE I

## Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

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 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

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their 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 Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency 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.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent

(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 Governmental Agency, the prime contractor and 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 are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate 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 engineer shall certify to the Authority, the Council 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 shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State 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 acquisition or construction of the Project and for two years following the completion of acquisition or construction 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 10th of each month to the Authority and Council.

2.13 The Governmental Agency shall serve the additional customers at the location(s) as set forth in Schedule X. The Governmental Agency shall not reduce the amount of additional customers served by the project without the prior written approval of the WDA Board. Following completion of the Project the Governmental Agency shall certify to the Authority the number of customers added to the System.

2.14 The Governmental Agency shall perform an annual maintenance audit which maintenance audit shall be submitted to the WDA and the Public Service Commission of West Virginia.

## ARTICLE III

### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council 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 and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and the Council 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;

(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 and the Council 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 and the Council, 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 and the Council 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 and the Council, 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 projects and satisfactory to the Authority and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council 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, the Council 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 Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

## ARTICLE IV

## Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule 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 (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount 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 a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

(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 is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to 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 amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and 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 fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(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 and

the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt a detailed, balanced 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 and the Council within 30 days of adoption thereof;

(xiii) That, 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, advanced from time to time, 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) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing 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 and the Council, 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 the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xvii) That the Governmental Agency shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5$^{th}$ day of such calendar month. When required by the Authority, the Local Entity shall make monthly payments to the Commission by electronic transfer;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, 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 Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and the Council, 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;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That 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 Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before making any changes to the final Schedule B and also before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin,

sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Council and the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (IV) the Governmental Agency will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such 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 and 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 bonds which are the source of money used to purchase the Local 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 and will take all such actions necessary to provide funds sufficient to produce the required sums 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 required sums set forth in the Local Act and this Loan Agreement, 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 (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

## ARTICLE VI

### Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used for the System, payable 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 and the Council upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule B 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, if any, 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 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

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

7.4 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.

7.5 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.

7.6 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.

7.7 This Loan Agreement 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.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.10 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

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.

BOONE COUNTY PUBLIC
SERVICE DISTRICT

(SEAL)

By: _____
Its: Chairman
Date: October 14, 2010

Attest:

_____
Its: Secretary

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: October 14, 2010

Attest:

_____
Its: Authorized Officer

{C1877342.1}

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____

(Issuer)

_____

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers,_____, _____ hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least ___years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and my firm[1] has ascertained that all

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____,

successful bidders 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 for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, [2]the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ___.

[SEAL]

_____

By: _____
West Virginia License No. _____

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Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and
Jobs Development Council
300 Summers Street, Suite 980
Charleston, West Virginia 25301

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

Ladies and Gentlemen:

We are bond counsel to _____ (the "Governmental Agency"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated _____, (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning _____, 1, _____, and ending _____, 1, _____, as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Governmental Agency on _____, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local 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 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 the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. 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 have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. 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 the 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,

EXHIBIT C

MONTHLY FINANCIAL REPORT

**Name of Governmental Agency** _____
**Name of Bond Issue(s)** _____
**Type of Project** _____ **Water** _____ **Wastewater**
**Fiscal Year** _____ **Report Month** _____

| Item | Current Month | Total Year To Date | Budget Year To Date | Budget Year To Date Minus Total Year To Date |
|---|---|---|---|---|
| 1. Gross Revenues | | | | |
| 2. Operating Expenses | | | | |
| 3. Bond Payments: | | | | |
| Type of Issue | | | | |
| Clean Water SRF | | | | |
| Drinking Water TRF | | | | |
| Infrastructure Fund | | | | |
| Water Development Authority | | | | |
| Rural Utilities Service | | | | |
| Economic Development Administration | | | | |
| Other (Identify) | | | | |
| _____ | | | | |
| _____ | | | | |
| 4. Renewal and Replacement Fund Deposits | | | | |

_____
**Name of Person Completing Form**

_____
**Address**

_____
**Telephone**

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of $1,200 are anticipated to be received for the year, each month the base would be increased by $100 ($1,200/12). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of $900 are anticipated to be incurred for the year, each month the base would be increased by $75 ($900/12). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

**The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

| | |
|---|---|
| Sinking Fund: | |
| Interest | $ |
| Principal | $ |
| Total: | $ |
| Reserve Account: | $ |

Witness my signature this ___ day of_____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds $1,062,000
Purchase Price of Local Bonds $1,062,000

The Local Bonds shall bear no interest. Commencing June 1, 2012, principal on the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall authorize the Commission to electronically debit its monthly payments. The Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interests and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

(i) Boone County Public Service District Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated April 26, 2000, issued in the original aggregate principal amount of $2,130,000; and

(ii) Boone County Public Service District Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated April 26, 2000, issued in the original aggregate principal amount of $4,909,161.

Number of New Customers to Be Served: 181
Location: US 119/Corridor G, Long Branch Road, Prichard Road, Arden Lane, Route 119/42, Mud River Road, Turtle Creek Road, Raccoon Branch Road, Indian Grave Road, Olive Branch Road and Low Gap Road areas

# SCHEDULE Y
# DEBT SERVICE SCHEDULE

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

Dated Date 10/14/10

Delivery Date 10/14/10

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 10/14/10 | | | |
| 6/1/12 | 6,897 | | 6,897 |
| 9/1/12 | 6,897 | | 6,897 |
| 12/1/12 | 6,897 | | 6,897 |
| 3/1/13 | 6,897 | | 6,897 |
| 6/1/13 | 6,897 | | 6,897 |
| 9/1/13 | 6,897 | | 6,897 |
| 12/1/13 | 6,897 | | 6,897 |
| 3/1/14 | 6,897 | | 6,897 |
| 6/1/14 | 6,897 | | 6,897 |
| 9/1/14 | 6,897 | | 6,897 |
| 12/1/14 | 6,897 | | 6,897 |
| 3/1/15 | 6,897 | | 6,897 |
| 6/1/15 | 6,897 | | 6,897 |
| 9/1/15 | 6,897 | | 6,897 |
| 12/1/15 | 6,897 | | 6,897 |
| 3/1/16 | 6,896 | | 6,896 |
| 6/1/16 | 6,896 | | 6,896 |
| 9/1/16 | 6,896 | | 6,896 |
| 12/1/16 | 6,896 | | 6,896 |
| 3/1/17 | 6,896 | | 6,896 |
| 6/1/17 | 6,896 | | 6,896 |
| 9/1/17 | 6,896 | | 6,896 |
| 12/1/17 | 6,896 | | 6,896 |
| 3/1/18 | 6,896 | | 6,896 |
| 6/1/18 | 6,896 | | 6,896 |
| 9/1/18 | 6,896 | | 6,896 |
| 12/1/18 | 6,896 | | 6,896 |
| 3/1/19 | 6,896 | | 6,896 |
| 6/1/19 | 6,896 | | 6,896 |
| 9/1/19 | 6,896 | | 6,896 |
| 12/1/19 | 6,896 | | 6,896 |
| 3/1/20 | 6,896 | | 6,896 |
| 6/1/20 | 6,896 | | 6,896 |
| 9/1/20 | 6,896 | | 6,896 |
| 12/1/20 | 6,896 | | 6,896 |
| 3/1/21 | 6,896 | | 6,896 |
| 6/1/21 | 6,896 | | 6,896 |
| 9/1/21 | 6,896 | | 6,896 |
| 12/1/21 | 6,896 | | 6,896 |
| 3/1/22 | 6,896 | | 6,896 |
| 6/1/22 | 6,896 | | 6,896 |
| 9/1/22 | 6,896 | | 6,896 |
| 12/1/22 | 6,896 | | 6,896 |

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 3/1/23 | 6,896 | | 6,896 |
| 6/1/23 | 6,896 | | 6,896 |
| 9/1/23 | 6,896 | | 6,896 |
| 12/1/23 | 6,896 | | 6,896 |
| 3/1/24 | 6,896 | | 6,896 |
| 6/1/24 | 6,896 | | 6,896 |
| 9/1/24 | 6,896 | | 6,896 |
| 12/1/24 | 6,896 | | 6,896 |
| 3/1/25 | 6,896 | | 6,896 |
| 6/1/25 | 6,896 | | 6,896 |
| 9/1/25 | 6,896 | | 6,896 |
| 12/1/25 | 6,896 | | 6,896 |
| 3/1/26 | 6,896 | | 6,896 |
| 6/1/26 | 6,896 | | 6,896 |
| 9/1/26 | 6,896 | | 6,896 |
| 12/1/26 | 6,896 | | 6,896 |
| 3/1/27 | 6,896 | | 6,896 |
| 6/1/27 | 6,896 | | 6,896 |
| 9/1/27 | 6,896 | | 6,896 |
| 12/1/27 | 6,896 | | 6,896 |
| 3/1/28 | 6,896 | | 6,896 |
| 6/1/28 | 6,896 | | 6,896 |
| 9/1/28 | 6,896 | | 6,896 |
| 12/1/28 | 6,896 | | 6,896 |
| 3/1/29 | 6,896 | | 6,896 |
| 6/1/29 | 6,896 | | 6,896 |
| 9/1/29 | 6,896 | | 6,896 |
| 12/1/29 | 6,896 | | 6,896 |
| 3/1/30 | 6,896 | | 6,896 |
| 6/1/30 | 6,896 | | 6,896 |
| 9/1/30 | 6,896 | | 6,896 |
| 12/1/30 | 6,896 | | 6,896 |
| 3/1/31 | 6,896 | | 6,896 |
| 6/1/31 | 6,896 | | 6,896 |
| 9/1/31 | 6,896 | | 6,896 |
| 12/1/31 | 6,896 | | 6,896 |
| 3/1/32 | 6,896 | | 6,896 |
| 6/1/32 | 6,896 | | 6,896 |
| 9/1/32 | 6,896 | | 6,896 |
| 12/1/32 | 6,896 | | 6,896 |
| 3/1/33 | 6,896 | | 6,896 |
| 6/1/33 | 6,896 | | 6,896 |
| 9/1/33 | 6,896 | | 6,896 |
| 12/1/33 | 6,896 | | 6,896 |
| 3/1/34 | 6,896 | | 6,896 |
| 6/1/34 | 6,896 | | 6,896 |
| 9/1/34 | 6,896 | | 6,896 |
| 12/1/34 | 6,896 | | 6,896 |

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 3/1/35 | 6,896 | | 6,896 |
| 6/1/35 | 6,896 | | 6,896 |
| 9/1/35 | 6,896 | | 6,896 |
| 12/1/35 | 6,896 | | 6,896 |
| 3/1/36 | 6,896 | | 6,896 |
| 6/1/36 | 6,896 | | 6,896 |
| 9/1/36 | 6,896 | | 6,896 |
| 12/1/36 | 6,896 | | 6,896 |
| 3/1/37 | 6,896 | | 6,896 |
| 6/1/37 | 6,896 | | 6,896 |
| 9/1/37 | 6,896 | | 6,896 |
| 12/1/37 | 6,896 | | 6,896 |
| 3/1/38 | 6,896 | | 6,896 |
| 6/1/38 | 6,896 | | 6,896 |
| 9/1/38 | 6,896 | | 6,896 |
| 12/1/38 | 6,896 | | 6,896 |
| 3/1/39 | 6,896 | | 6,896 |
| 6/1/39 | 6,896 | | 6,896 |
| 9/1/39 | 6,896 | | 6,896 |
| 12/1/39 | 6,896 | | 6,896 |
| 3/1/40 | 6,896 | | 6,896 |
| 6/1/40 | 6,896 | | 6,896 |
| 9/1/40 | 6,896 | | 6,896 |
| 12/1/40 | 6,896 | | 6,896 |
| 3/1/41 | 6,896 | | 6,896 |
| 6/1/41 | 6,896 | | 6,896 |
| 9/1/41 | 6,896 | | 6,896 |
| 12/1/41 | 6,896 | | 6,896 |
| 3/1/42 | 6,896 | | 6,896 |
| 6/1/42 | 6,896 | | 6,896 |
| 9/1/42 | 6,896 | | 6,896 |
| 12/1/42 | 6,896 | | 6,896 |
| 3/1/43 | 6,896 | | 6,896 |
| 6/1/43 | 6,896 | | 6,896 |
| 9/1/43 | 6,896 | | 6,896 |
| 12/1/43 | 6,896 | | 6,896 |
| 3/1/44 | 6,896 | | 6,896 |
| 6/1/44 | 6,896 | | 6,896 |
| 9/1/44 | 6,896 | | 6,896 |
| 12/1/44 | 6,896 | | 6,896 |
| 3/1/45 | 6,896 | | 6,896 |
| 6/1/45 | 6,896 | | 6,896 |
| 9/1/45 | 6,896 | | 6,896 |
| 12/1/45 | 6,896 | | 6,896 |
| 3/1/46 | 6,896 | | 6,896 |
| 6/1/46 | 6,896 | | 6,896 |
| 9/1/46 | 6,896 | | 6,896 |
| 12/1/46 | 6,896 | | 6,896 |

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 3/1/47 | 6,896 | | 6,896 |
| 6/1/47 | 6,896 | | 6,896 |
| 9/1/47 | 6,896 | | 6,896 |
| 12/1/47 | 6,896 | | 6,896 |
| 3/1/48 | 6,896 | | 6,896 |
| 6/1/48 | 6,896 | | 6,896 |
| 9/1/48 | 6,896 | | 6,896 |
| 12/1/48 | 6,896 | | 6,896 |
| 3/1/49 | 6,896 | | 6,896 |
| 6/1/49 | 6,896 | | 6,896 |
| 9/1/49 | 6,896 | | 6,896 |
| 12/1/49 | 6,896 | | 6,896 |
| 3/1/50 | 6,896 | | 6,896 |
| 6/1/50 | 6,896 | | 6,896 |
| 9/1/50 | 6,897 | | 6,897 |
| | **1,062,000** | | **1,062,000** |

SCHEDULE Z

None.

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

Writer's Contact Information
(304) 353-8196 – Telephone
(304) 353-8180 – Facsimile
John.stump@steptoe-johnson.com

October 4, 2010

04:48 PM OCT 04 2010 PSC EXEC SEC DIV

***Via Hand Delivery***

Sandra Squire, *Executive Secretary*
Public Service Commission of West Virginia
201 Brooks Street
Charleston, West Virginia 25323

Case No.: 10-0260-PWD-PW-CN

BOONE COUNTY PUBLIC SERVICE DISTRICT
Application for a certificate of convenience and necessity to construct a potable water line extension to serve approximately 181 new customers in the Turtle Creek/Corridor G area that will extend the District's potable water distribution system operated by West Virginia-American Water Company, and petition for waiver of the obligation to file a Rule 42 Exhibit.

Dear Ms. Squire:

Enclosed herein for filing on behalf of Boone County Public Service District, please find an affidavit by the District's certified public accountant.

Please file the enclosed affidavit and distribute the additional copies to the appropriate parties at the Commission. Additionally, I ask that you date stamp the file copy provided and return it with our messenger. Thank you in advance for your attention to this matter, and should you have any questions please contact me at (304) 353-8196.

Best Regards,

John C. Stump
(W. V. State Bar No. 6385)

Enclosures

091620.00002

04:48 PM OCT 04 2010 PSC EXEC SEC DIV

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Case No.: 10-0260-PWD-PW-CN

BOONE COUNTY PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to construct a potable water line extension to serve approximately 181 new customers in the Turtle Creek/Corridor G area that will extend the District's potable water distribution system operated by West Virginia-American Water Company, and petition for waiver of the obligation to file a Rule 42 Exhibit.

STATE OF WEST VIRGINIA
COUNTY OF CABELL, TO-WIT:

AFFIDAVIT

I, Rod Lowe, CPA, after making an oath of affirmation to tell the truth, say that, I have reviewed the Recommended Decision of the Public Service Commission of West Virginia in Case No. 10-0260-PWD-CN dated July 13, 2010 approving funding consisting of: (a) a West Virginia Infrastructure and Jobs Development Council loan in the amount of $1,062,000, at 0% for 40 years; (b) a West Virginia Infrastructure and Jobs Development Council grant in the amount of $348,635; (c) a contribution in aid of construction in the amount of $1,500,000 from the U.S. Army Corp of Engineers; (d) a contribution in the amount of $300,000 from the Boone County Commission; and (e) a contribution in aid of construction in the amount of $145,000 from the West Virginia-American Water Company, and based upon all the information that has been provided to me, to date, I am of the opinion that the rates and charges (i) are not affected by the revised funding consisting of: (a) a West Virginia Infrastructure and Jobs Development Council loan in the amount of $1,062,000, at 0% for 40 years; (b) a West Virginia Infrastructure and Jobs Development Council grant in the revised amount of $232,663; (c) a contribution in aid of construction in the amount of $1,500,000 from the U.S. Army Corp of Engineers; (d) a contribution in the amount of $300,000 from the Boone County Commission; and (e) a contribution in aid of construction in the amount of $145,000 from the West Virginia-American Water Company; and (ii) will be sufficient to provide revenues which, together with other revenues of the System, will allow me to provide the CPA certification required for the issuance of the Bonds.

This Affidavit is executed on the 1st day of October, 2010

Rodman G Lowe

Rod Lowe, CPA
Bassett & Lowe

Taken, subscribed and sworn to before me this 1st day of October, 2010.

My commission expires 9-11-17.

Jessica R. Rosenberg

Notary Public

[SEAL]

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Jessica R. Rosenberg
8 Long Street
Winfield, WV 25213
My Commission Expires September 11, 2017

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: July 13, 2010

CASE NO. 10-0260-PWD-PW-CN

BOONE COUNTY PUBLIC SERVICE DISTRICT,
a public utility,
Danville, Boone County.

Application for a certificate of convenience and necessity to construct a potable water line extension to serve approximately 181 new customers in the Turtle Creek/Corridor G area that will extend the District's potable water distribution system operated by West Virginia-American Water Company, and petition for waiver of the obligation to file a Rule 42 Exhibit.

## RECOMMENDED DECISION

On March 1, 2010, the Boone County Public Service District (Utility) filed an application for a certificate of convenience and necessity to construct a water line to serve approximately 181 new customers in Boone County. The Utility also requested a waiver of the Rule 42 filing requirements.

On March 1, 2010, the Commission required the Utility to publish notice of filing once in a newspaper published and generally circulated in Boone County.

On March 10, 2010, the Commission referred the matter. The Commission required a decision to be rendered on or before July 14, 2010, in the event there were no substantial protests to the application.

On March 16, 2010, the Utility filed an affidavit of publication indicating that the matter was properly published.

There have been no protests to the application.

On May 27, 2010, Staff recommended that a certificate be issued and that the Commission waive Rule 42T.

## FINDINGS OF FACT

1. The project is estimated to cost $3,355,635. (See Final Joint Staff Memorandum filed May 27, 2010).

2. The project has been approved by the West Virginia Infrastructure and Jobs Development Council (WVIJDC). (See Final Joint Staff Memorandum filed May 27, 2010).

3. The Utility properly published notice of its filing and no protests were made. (See affidavit of publication filed on March 16, 2010, and file generally).

4. The project will serve new customers in the Turtle Creek/Corridor G area in Boone County. (See Final Joint Staff Memorandum filed May 27, 2010).

5. The project is an extension of the Utility's distribution system which is operated by West Virginia-American Water Company (WVAWC). (Id.).

6. Water will be supplied by the WVAWC Kanawha Valley Water Treatment Plant. (Id.).

7. The base portion of the project is designed to serve 137 customers and consists of approximately 22,150 l.f. of 8-inch pipe, 6,500 l.f. of 6-inch pipe, 5,220 l.f. of 2-inch pipe; necessary steel casing pipe; 16 fire hydrants; 137 meters and meter settings; and related items. (Id.).

8. The project includes four additive alternatives: Additive No. 1 would serve Mud River Road with 27 customers; Additive No. 2 would serve Indian Grave Road with 8 customers; Additive No. 3 would serve Raccoon Branch with 7 customers; and Additive No. 4 would construct a loop to connect the northern part of the project to the southern part of the project. (Id.).

9. The base project cost is $24,493 per customer, but debt is only occurred in the amount of $7,752 per customer. (Id.).

10. Base customer density is 22 customers per mile. (Id.).

11. The Mud River additive is estimated to have a construction cost of $270,000. The Indian Grave Road additive construction cost is estimated at $140,000. The Raccoon Branch additive construction cost is estimated at $100,000. The connector additive construction cost is estimated at $140,000. (Id.).

12. The West Virginia Office of Environmental Health Services has approved the project. (See Permit No. 18,359).

13. The plans and specifications for the project do not conflict with the Commission's Water Rules. (See Final Joint Staff Memorandum filed May 27, 2010).

14. The residents in the project area experience inadequate wells and cisterns and frequently have to haul water to their homes. (Id.).

15. Construction of the project would provide the residents with a safe and continuous supply of potable water. (Id.).

16. WVAWC will be responsible for all operation and maintenance expenses associated with the project through the existing operation and maintenance agreement between the Utility and WVAWC. (See Final Joint Staff Memorandum filed May 27, 2010).

17. No rate increase will be required to serve the new customers. (Id.).

18. The project is proposed to be funded through a WVIJDC loan in the amount of $1,062,000, at zero percent for 40 years; a WVIJDC grant in the amount of $348,635; a contribution in aid of construction in the amount of $1,500,000 from the U.S. Army Corp of Engineers; a contribution in the amount of $300,000 from the Boone County Commission; and a contribution in aid of construction in the amount $145,000 from WVAWC. (Id.).

19. The rate proposed for the project is the current WVAWC tariff rate. (Id.).

20. WVAWC operates the Utility in the same manner as several of the other public/private partnerships that WVAWC has throughout the state. (Id.).

21. All revenues and expenses of the project area will be absorbed into the operations of WVAWC. (Id.).

22. Staff recommended that the Commission grant the waiver for the requirement to file a Rule 42 Exhibit. (Id.).

23. WVAWC did file an economic analysis of the project which was reviewed by Staff. (Id.).

24. The project should allow WVAWC to realize a rate of return on investment comparable to the WVAWC's currently allowed rate of return. (Id.).

## CONCLUSIONS OF LAW

1. It is reasonable to waive the Rule 42 filing requirement.

2. The public convenience and necessity require the project.

3. The proposed financing is reasonable and should be approved.

4. The application for a certificate and convenience and necessity should be granted without a hearing.

## ORDER

IT IS, THEREFORE, ORDERED that the application filed by the Boone County Public Service District on March 1, 2010, be, and hereby is, granted. The cost of the project shall not exceed $3,355,635.

IT IS FURTHER ORDERED that the proposed financing, consisting of a West Virginia Infrastructure and Jobs Development Council loan in the amount of $1,062,000, at zero percent for 40 years; a West Virginia Infrastructure and Jobs Development Council grant in the amount of $348,635; a contribution in aid of construction in the amount of $1,500,000 from the U.S. Army Corp of Engineers; a contribution in the amount of $300,000 from the Boone County Commission; and a contribution in aid of construction in the amount of $145,000 from the West Virginia-American Water Company, be, and hereby is, approved.

IT IS FURTHER ORDERED that the request to waive Rule 42 filing requirements be, and hereby is, granted.

IT IS FURTHER ORDERED that, if the scope or plans for the project change, or project cost or financing changes require further rate increase beyond any approved by this Order, the Utility must obtain prior Commission approval before commencing construction. Changes in project costs or financing do not require separate approval, if those changes do not affect rates and the Utility submits an affidavit from a certified public accountant to this effect.

IT IS FURTHER ORDERED that the Utility submit to the Commission a copy of the certificate of substantial completion for each contract as they become available. The Utility shall also provide a copy of the engineers bid tabulation for each contract within ten days of the bid opening date.

IT IS FURTHER ORDERED that the Utility shall request approval for any necessary project revisions and submit necessary engineering and financial data in support of such revisions.

IT IS FURTHER ORDERED that the Utility comply with all rules and regulations of the Department of Highways regarding the use of DOH right-of-ways, if any are used.

IT IS FURTHER ORDERED that the Utility file the engineer's certificate of substantial completion as soon as it becomes available.

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

IT IS FURTHER ORDERED that the Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, upon all parties of record who have not filed an e-service agreement with the Commission.

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

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

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

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

K. A. George

Keith A. George
Administrative Law Judge

KAG:bam
100260a.wpd

PSC - Rate Order

P.S.C. W.Va. No. 8
Canceling P.S.C. W.Va. No. 7

Boone County Public Service District

of

Madison, West Virginia

Rates, Rules and Regulations for furnishing

# WATER

at

Service Territory - areas formerly served by the
Danville, Van, Coal River and Spruce
Fork Public Service Districts

Filed with THE PUBLIC SERVICE COMMISSION
of
WEST VIRGINIA

RECEIVED
09 APR 27 PM 4:04
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

Issued: April 27, 2009

Effective: March 26, 2009

Issued by: Boone County Public Service District

By: _____

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 08-0900-W-42T (West Virginia-American Water Company).

## RULES AND REGULATIONS

I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

RECEIVED
09 APR 27 PM 4:04
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

Issued: April 27, 2009

Effective: March 26, 2009

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 08-0900-W-42T (West Virginia-American Water Company).

RECEIVED
09 APR 27 PM 4:04
W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

## AVAILABILITY OF SERVICE

Available for all residential, commercial and industrial service.

## RATE

| | | | |
|---|---|---|---|
| | First | 1,500 | gallons used per month at the minimum charge |
| (I) | Next | 28,500 | gallons used per month $9.2022 per 1,000 gallons |
| (I) | Next | 870,000 | gallons used per month $6.0598 per 1,000 gallons |
| (I) | Next | 8,100,000 | gallons used per month $4.4090 per 1,000 gallons |
| (I) | All Over | 9,000,000 | gallons used per month $2.8680 per 1,000 gallons |

## MINIMUM CHARGE

No bill shall be rendered for less than the following amount, according to the size of the meter installed, to wit: for customers having multiple meter settings, the minimum charge will be the sum of the minimum charges for each of the individual meters:

| | | | |
|---|---|---|---|
| (I) | 3/4 | inch meter or less | $ 20.75 per month |
| (I) | 1 | inch | 50.84 per month |
| (I) | 1-1/2 | inch | 100.99 per month |
| (I) | 2 | inch | 161.21 per month |
| (I) | 3 | inch | 301.68 per month |
| (I) | 4 | inch | 502.34 per month |
| (I) | 6 | inch | 1,004.01 per month |
| (I) | 8 | inch | 1,606.04 per month |

*All residential customers shall be served through a 5/8" meter, provided however, that the Company may install a larger meter when reasonably necessary. This restriction shall not apply to residential meters currently in service.

(I) INDICATES INCREASE

Issued: April 27, 2009

Effective: March 26, 2009

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 08-0900-W-42T (West Virginia-American Water Company).

## AVAILABILITY

Available for sale for resale service.

## RATE

| | | | |
|---|---|---|---|
| | First | 1,500 | gallons used per month at the minimum charge |
| (I) | Next | 28,500 | gallons used per month $9.2022 per 1,000 gallons |
| (I) | Next | 870,000 | gallons used per month $6.0053 per 1,000 gallons |
| (I) | Next | 8,100,000 | gallons used per month $4.6120 per 1,000 gallons |
| (I) | All Over | 9,000,000 | gallons used per month $3.2506 per 1,000 gallons |

## MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of the meter installed, to wit: for customers having multiple meter settings, the minimum charge will be the sum of the minimum charges for each of the individual meters:

| | | | |
|---|---|---|---|
| (I) | 3/4 | inch meter or less | $ 20.75 per month |
| (I) | 1 | inch meter | 50.84 per month |
| (I) | 1-1/2 | inch meter | 100.99 per month |
| (I) | 2 | inch meter | 161.21 per month |
| (I) | 3 | inch meter | 301.68 per month |
| (I) | 4 | inch meter | 502.34 per month |
| (I) | 6 | inch meter | 1,004.01 per month |
| (I) | 8 | inch meter | 1,606.04 per month |

(I) INDICATES INCREASE

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SECRETARY'S OFFICE

Issued: April 27, 2009

Effective: March 26, 2009

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 08-0900-W-42T (West Virginia-American Water Company).

Applicable in entire territory served by the Boone County Public Service District.

## AVAILABILITY OF SERVICE

Available for private fire protection service.

## RATE

Where connections, hydrants, sprinklers, etc. on private property are maintained by consumer:

| | Per Annum |
|---|---|
| (I) 2-inch Service Line with hydrants, sprinklers, and/or hose connections | $ 83.58 |
| (I) 3-inch Service Line with hydrants, sprinklers, and/or hose connections | 190.05 |
| (I) 4-inch Service Line with hydrants, sprinklers, and/or hose connections | 333.66 |
| (I) 6-inch Service Line with hydrants, sprinklers, and/or hose connections | 845.76 |
| (I) 8-inch Service Line with hydrants, sprinklers, and/or hose connections | 1,386.96 |
| (I) 10-inch Service Line with hydrants, sprinklers, and/or hose connections | 2,460.62 |
| (I) 12-inch Service Line with hydrants, sprinklers, and/or hose connections | 3,447.99 |

These terms are payable monthly in advance.

(I) INDICATES INCREASE

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W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

Issued: April 27, 2009

Effective: March 26, 2009

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 08-0900-W-42T (West Virginia-American Water Company).

## INCREMENTAL COST OF WATER

$.30 per 1,000 gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter.
This rate shall be applied to all such unusual consumption above the customer's historical average usage.

## DELAYED PAYMENT PENALTY

The Company's tariffs are net. On all current usage bills not paid within twenty-one (21) days of the date of bill, ten percent (10%) will be added to the net amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

## RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the Company, not to exceed $15.00, will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

## RECONNECTION CHARGE

When it has been necessary to discontinue water service to any premises on account of non-payment of any charges for water service, a charge of twenty dollars ($20.00) will be made to cover the cost of turning on the water service. This charge will not apply where the Company has a disconnection agreement with a sewer utility and is entitled to collect a reconnection charge from the sewer utility for such reconnection for non-payment of sewer charges. This charge may be added to a past due balance and included in the outstanding balance under a deferred payment agreement.

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W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

Issued: April 27, 2009

Effective: March 26, 2009

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 03-0353-W-42T (West Virginia-American Water Company).

## SERVICE CONNECTION (TAP) FEE

Applicable to the entire Service Territory of West Virginia-American Water Company.

## AVAILABILITY OF SERVICE

Available for residential, commercial, industrial, other public authority and sales for resale customers.

## CONNECTION (TAP) FEES

All Meter Sizes Connected $300.00

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COMMISSION
SECRETARY'S OFFICE

Issued: April 27, 2009

Effective: March 26, 2009

Issued under authority of an Order of the Public Service Commission of West Virginia in Case No. 04-0373-W-42T (West Virginia American Water Company).

**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 1st day of April 2009.

CASE NO. 08-0900-W-42T

WEST VIRGINIA-AMERICAN WATER COMPANY
Tariff Rule 42 tariff filing to increase water rates and charges.

## COMMISSION FURTHER CORRECTIVE ORDER

This order corrects an error in the income tax calculations contained in the Commission's March 25, 2009 Order in this case.

## DISCUSSION

In the Order dated March 25, 2009, the Commission Revenue Requirement included an allowance for Federal Income Taxes of $3,194,000 and State Income Taxes of $1,302,000. The Commission calculation of these taxes unfortunately was in error and must be corrected. Taxable income for ratemaking purposes is calculated by applying certain statutory deductions to net operating income to arrive at net taxable income. Because the Commission calculates an allowance for net operating income on an after-tax basis, it is necessary to determine operating income before income taxes before calculating taxable income. There was an error in this step in our March 25 Order. Calculated correctly, the allowance for Federal Income Taxes has been revised to $3,953,000 and the allowance for State Income Taxes has been revised to $1,494,000.

This correction does not result from a change in the methodology or the underlying mechanics of the tax calculation used in the March 25, 2009 Order and is only to correct a mathematical error in the Commission calculations to arrive at the federal and state income tax components of the Company's revenue requirements and the additional revenue related expenses associated with the overall increase granted.

As a result of the additional revenue requirement from the corrected income tax calculations, and the additional B&O taxes and allowance for uncollectibles[1] that flow from that calculation, the total revenue increase allowed by the Commission has been adjusted upward from $4,154,000 to $5,179,000, as reflected on the Revised Appendix A attached hereto.

The Commission has calculated adjusted rates to reflect the change in revenue requirements. The rates authorized for West Virginia-American Water Company ("Company") to be effective for all usage on and after March 26, 2009, are attached hereto as Appendix B. The increase effected by this correction results in a further increase of approximately $0.36 per month for customers using 3,800 gallons per month, over the $1.44 per month increase approved in the March 25, 2009 Order.

Because of this correction, the Commission will extend the period for filing petitions for reconsideration by all parties until April 14, 2009.

## ORDER

IT IS THEREFORE ORDERED that the Appendix A and Appendix B attached to this order shall substitute for the Appendix A and Appendix B attached to the March 25 and March 26, 2009, orders.

IT IS FURTHER ORDERED that upon entry of this order this case shall be removed from the Commission docket of open cases.

---

[1] When the Commission authorizes an increase in revenue there are additional State Business and Occupation Taxes and increased uncollectibles applicable to the increased revenue. The Company is entitled to a total revenues increase sufficient to pay the additional taxes and to cover additional uncollectibles. The Commission, therefore, provides for additional revenues to cover these additional revenue related expenses.

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

**A True Copy, Teste:**

Sandra Squire

**Sandra Squire**
**Executive Secretary**

JJW/slc
080900cg.wpd

## Appendix A

| | Commission Adjusted Revenue Requirement Components |
|---|---|
| | (000) $ |
| Going Level Revenue per Company filing | 119,266 |
| Commission Adjustments: | |
| To disallow Company adjustment to reduce going level billing units | 595 |
| To reflect additional delayed payment penalties on Commission adjustment - at 2.0263% | 12 |
| Total Commission adjusted Going Level Revenue | 119,873 |
| Going Level O&M Expenses per Company filing | 59,345 |
| Commission Adjustments: | |
| To disallow 2009 3% pay raise to salaried, non-union employees | (156) |
| To disallow 1/2 of 3% adjustment to Service Corporation charges | (136) |
| To adjust relocation expense to average as agreed to by CAD and Company | (88) |
| To adjust rate case expense to reflect 2 year amortization of current rate case expense | (124) |
| To adjust to FAS-87 pension basis for Service Corp employees | (259) |
| Advertising expense adjustment | (54) |
| To adjust payroll expense ratio 70.72% | (558) |
| To disallow tank access road and security Adjustment | (250) |
| To adjust gasoline and diesel fuel expenses | (189) |
| To disallow certain fines and penalties | (34) |
| To adjust rates for group life and medical insurance | (230) |
| To correct error in calculation of average tank painting costs | (25) |
| To disallow Company adjustment for increased sludge disposal costs | (23) |
| To reverse adjustments for lower power and chemical costs related to lower system delivery. | 25 |
| To adjust test year payroll reflected in the Company's Rule 42 exhibit to an accrual basis | (423) |
| Total Commission adjusted O&M Expenses | 56,821 |
| Going level Depreciation and Amortization Expenses per Company filing | 14,597 |
| Commission Adjustments: | |
| To reflect depreciation on plant adjustments made by Commission | (166) |
| Total Commission adjusted Depreciation and Amortization Expenses | 14,431 |
| Going level Taxes Other Than Income Taxes per Company filing | |
| Commission Adjustments: | 14,197 |
| To reflect CAD proposed adjustment to property taxes | 271 |
| Total Commission adjusted Taxes Other Than Income Taxes | 14,468 |
| Going level Rate Base per Company filing | 421,159 |
| Commission Adjustments: | |
| To exclude year end rate base adjustment relating to plant other than T&D mains, services, meters and hydrants | (1,702) |
| To exclude Company adjustment for future additions related to Leak Study | (4,000) |
| To adjust cash working capital to reflect additional lag in AWSCC charges | (312) |
| To adjust Contributions in Aid of Construction to include negative Acquisition Adjustment | (451) |
| Commission adjusted Rate Base | 414,694 |

# Appendix A

| Commission Revenue Requirements | (000) $ |
|---|---|
| Commision Determined Rate Base | 414,694 |
| Commision determined rate of return | 8.098% |
| Allowance for return | 33,580 |
| O&M Expenses | 56,821 |
| Depreciation and Amortization | 14,431 |
| Taxes Other Than Income | 14,468 |
| Federal Income Tax | 3,953 |
| State Income Tax | 1,494 |
| Total Revenue Requirements | 124,747 |
| Going Level Revenue | 119,873 |
| Increase | 4,874 |
| Additional B&O Taxes | 224 |
| Additional Uncollectibles | 81 |
| Total Increase | 5,179 |

**Appendix B**

WEST VIRGINIA AMERICAN WATER COMPANY
AUTHORIZED TARIFF

Applicable in the entire territory served by the West Virginia-American Water Company, except those communities noted on Original Sheet No. 7-a and 7-e.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, and industrial service.

RATE

| | |
|---|---|
| First | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.2022 per 1,000 gallons |
| Next | 870,000 gallons used per month $6.0598 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.4090 per 1,000 gallons |
| All over | 9,000,000 gallons used per month $2.8680 per 1,000 gallons |

MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of each meter installed, to-wit; for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:

| | | |
|---|---|---|
| 3/4 inch meter or less* | $ 20.75 | per month |
| 1 inch meter | $ 50.84 | per month |
| 1 - 1/2 inch meter | $ 100.99 | per month |
| 2 inch meter | $ 161.21 | per month |
| 3 inch meter | $ 301.68 | per month |
| 4 inch meter | $ 502.34 | per month |
| 6 inch meter | $1,004.01 | per month |
| 8 inch meter | $1,606.04 | per month |

* All residential customers shall be served through a 5/8" meter, provided, however, that the Company may install a larger meter when reasonably necessary. This restriction shall not apply to residential meters currently in service.

**Appendix B**

WEST VIRGINIA AMERICAN WATER COMPANY
AUTHORIZED TARIFF

Applicable in the following areas:

- Winifrede, Carbon and Decota communities of Kanawha County
- Coopers Hollow Road at Winifrede

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

RATE

| | |
|---|---|
| First | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.2022 per 1,000 gallons |
| Next | 870,000 gallons used per month $6.0598 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.4090 per 1,000 gallons |
| All over | 9,000,000 gallons used per month $2.8680 per 1,000 gallons |

MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of each meter installed, to-wit; for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:

| | | | | | | |
|---|---|---|---|---|---|---|
| 3/4 | inch meter or less* | $ | 20.75 per month | + $10.00 | = $ | 30.75 per month |
| 1 | inch meter | $ | 50.84 per month | + 10.00 | = | 60.84 per month |
| 1-1/2 | inch meter | $ | 100.99 per month | + 10.00 | = | 110.99 per month |
| 2 | inch meter | $ | 161.21 per month | + 10.00 | = | 171.21 per month |
| 3 | inch meter | $ | 301.68 per month | + 10.00 | = | 311.68 per month |
| 4 | inch meter | $ | 502.34 per month | + 10.00 | = | 512.34 per month |
| 6 | inch meter | $ | 1004.01 per month | + 10.00 | = | 1014.01 per month |
| 8 | inch meter | $ | 1606.04 per month | + 10.00 | = | 1616.04 per month |

* All residential customers shall be served through a 5/8" meter, provided, however, that the Company may install a larger meter when reasonably necessary. This restriction shall not apply to residential meters currently in service.

**Appendix B**

WEST VIRGINIA AMERICAN WATER COMPANY
AUTHORIZED TARIFF

Applicable in the entire territory served by the West Virginia-American Water Company.

AVAILABILITY OF SERVICE

Available for wholesale service.

RATE

| | |
|---|---|
| First | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.2022 per 1,000 gallons |
| Next | 870,000 gallons used per month $6.0053 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.6120 per 1,000 gallons |
| All over | 9,000,000 gallons used per month $3.2506 per 1,000 gallons |

MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of each meter installed, to-wit; for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:

| | | | |
|---|---|---|---|
| 3/4 | inch meter or less* | $ 20.75 | per month |
| 1 | inch meter | $ 50.84 | per month |
| 1-1/2 | inch meter | $ 100.99 | per month |
| 2 | inch meter | $ 161.21 | per month |
| 3 | inch meter | $ 301.68 | per month |
| 4 | inch meter | $ 502.34 | per month |
| 6 | inch meter | $1,004.01 | per month |
| 8 | inch meter | $1,606.04 | per month |

**Appendix B**

WEST VIRGINIA AMERICAN WATER COMPANY
AUTHORIZED TARIFF

Applicable in the entire territory served by the West Virginia-American Water Company except the community noted on Original Sheet 8-a.

AVAILABILITY OF SERVICE

Available for private fire protection service.

RATE

Where connections, hydrants, sprinklers, etc. on private property are maintained by consumer:

| | Per Annum |
|---|---|
| 2 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 83.58 |
| 3 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 190.05 |
| 4 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 333.66 |
| 6 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 845.76 |
| 8 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 1,386.96 |
| 10 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 2,460.62 |
| 12 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 3,447.99 |

These terms are payable monthly in advance.

**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 26th day of March 2009.

CASE NO. 08-0900-W-42T

WEST VIRGINIA-AMERICAN WATER COMPANY
Tariff Rule 42 tariff filing to increase water rates and charges.

## COMMISSION CORRECTIVE ORDER

On March 25, 2009, the Commission issued its final order in this case but inadvertently mislabeled and truncated Appendix A to that order. The complete version of Appendix A is attached.

## ORDER

IT IS THEREFORE ORDERED that the two pages attached as Appendix A to this Order shall substitute for Appendix A, attached to the March 25, 2009, Order.

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

A True Copy, Teste: Sandra Squire
Sandra Squire
Executive Secretary

JJW/slc
080900cf.wpd

## Appendix A

| | Commission Adjusted Revenue Requirement Components (000) $ |
|---|---|
| Going Level Revenue per Company filing | 119,266 |
| Commission Adjustments: | |
| To disallow Company adjustment to reduce going level billing units | 595 |
| To reflect additional delayed payment penalties on Commission adjustment - at 2.0263% | 12 |
| Total Commission adjusted Going Level Revenue | 119,873 |
| Going Level O&M Expenses per Company filing | 59,345 |
| Commission Adjustments: | |
| To disallow 2009 3% pay raise to salaried, non-union employees | (156) |
| To disallow 1/2 of 3% adjustment to Service Corporation charges | (136) |
| To adjust relocation expense to average as agreed to by CAD and Company | (88) |
| To adjust rate case expense to reflect 2 year amortization of current rate case expense | (124) |
| To adjust to FAS-87 pension basis for Service Corp employees | (259) |
| Advertising expense adjustment | (54) |
| To adjust payroll expense ratio 70.72% | (558) |
| To disallow tank access road and security Adjustment | (250) |
| To adjust gasoline and diesel fuel expenses | (189) |
| To disallow certain fines and penalties | (34) |
| To adjust rates for group life and medical insurance | (230) |
| To correct error in calculation of average tank painting costs | (25) |
| To disallow Company adjustment for increased sludge disposal costs | (23) |
| To reverse adjustments for lower power and chemical costs related to lower system delivery. | 25 |
| To adjust test year payroll reflected in the Company's Rule 42 exhibit to an accrual basis | (423) |
| Total Commission adjusted O&M Expenses | 56,821 |
| Going level Depreciation and Amortization Expenses per Company filing | 14,597 |
| Commission Adjustments: | |
| To reflect depreciation on plant adjustments made by Commission | (166) |
| Total Commission adjusted Depreciation and Amortization Expenses | 14,431 |
| Going level Taxes Other Than Income Taxes per Company filing | |
| Commission Adjustments: | 14,197 |
| To reflect CAD proposed adjustment to property taxes | 271 |
| Total Commission adjusted Taxes Other Than Income Taxes | 14,468 |
| Going level Rate Base per Company filing | 421,159 |
| Commission Adjustments: | |
| To exclude year end rate base adjustment relating to plant other than T&D mains, services, meters and hydrants | (1,702) |
| To exclude Company adjustment for future additions related to Leak Study | (4,000) |
| To adjust cash working capital to reflect additional lag in AWSCC charges | (312) |
| To adjust Contributions in Aid of Construction to include negative Acquisition Adjustment | (451) |
| Commission adjusted Rate Base | 414,694 |

## Appendix A

| Commission Revenue Requirements | (000) $ |
|---|---|
| Commision Determined Rate Base | 414,694 |
| Commision determined rate of return | 8.098% |
| Allowance for return | 33,580 |
| O&M Expenses | 56,821 |
| Depreciation and Amortization | 14,431 |
| Taxes Other Than Income | 14,468 |
| Federal Income Tax | 3,194 |
| State Income Tax | 1,302 |
| Total Revenue Requirements | 123,796 |
| Going Level Revenue | 119,873 |
| Increase | 3,923 |
| Additional B&O Taxes | 166 |
| Additional Uncollectibles | 65 |
| Total Increase | 4,154 |

**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 25th day of March 2009.

CASE NO. 08-0900-W-42T

WEST VIRGINIA-AMERICAN WATER COMPANY
Tariff Rule 42 tariff filing to increase water rates and charges.

## COMMISSION ORDER

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On May 30, 2008, the West Virginia-American Water Company ("Company" or "WVAWC") made a tariff filing with the Commission seeking an increase in revenues of approximately $14.8 million, or approximately 12.3%. This Order authorizes an increase of $4.3 million, which represents an increase of approximately 3.5% in Company revenues at current rates and reduces by $10.5 million or 71%, the increase by the Company, all as more specifically provided in this Order.

## INTRODUCTION

West Virginia-American Water Company is the largest water public utility in West Virginia. It serves nearly 40% of the residents of this State with potable water that meets every water quality standard imposed by State and Federal authorities. It has been a pioneer in developing cooperative efforts for extending water service into and throughout some of the most difficult service areas within the State. It has been a good corporate citizen, frequently supporting small town and large city activities and encouraging its executives and professionals to participate in government and nonprofit charitable activities within the State.

WVAWC stepped forward in the early to late 1990s, at a time when the State was trying desperately to expand safe drinking water service and infrastructure to its citizens and indicated its willingness to expend $200 to $300 million in private capital for that purpose, an enormous commitment for a private water utility in this State, to spur the development of quality water service into unserved or underserved areas and to leverage the spending of public sector funds for the same purpose.

During the time of that expansion, the Company sought, and in some instances received, regulatory treatments that recognized the investments that were being made by WVAWC and its commitment to improving the quality of service for customers throughout the State. These regulatory treatments were often more favorable to WVAWC than traditional regulatory policy that the Commission applied to utilities that were operating under different circumstances from WVAWC. That treatment was frequently extended to the Company in either annual rate filings or during "rate filing moratoria" that spanned several years, but that allowed periodic step rate increases or other types of rate adjustments to the Company, even during those moratoria periods. The Company frequently cited its good public work on behalf of providing water service to the "unserved" or "underserved" citizens of West Virginia as the basis for those rate filings and those frequent rate increases.

As a part of its capital commitment, WVAWC undertook the renovation or replacement of many small treatment plants that served some of the smaller customer distribution systems in south-central and southern West Virginia and upgraded its primary or flagship treatment plants in Kanawha, Cabell, Fayette, Lewis and Mercer/Summer Counties. Incident to public/private partnerships entered into by the Company, frequently involving the construction or renovation of these plants, the Company extended transmission and distribution mains into areas that could be served from these larger treatment plants. As a result, WVAWC has wide-spread service areas, often marked by long transmission and

distribution runs and a large number of boosters, tanks and related facilities that frequently serve pockets of customers or areas with relatively low customer density.

All of these factors, and the willingness of the Company to take on unserved, poorly-served or underserved areas or to acquire troubled systems contiguous to its service areas, have caused, at least in part, the escalating rates of the Company and to some extent help to explain the Company's relatively high unaccounted for water losses.

Because of all of this, over the last fifteen years, the Company has experienced (i) an increase in the frequency and size of rate requests and allowances, and (ii) an increase (for the for lack of a better term) in the "absolute" level of the Company's rates, both of which have drawn the negative attention of the public. During that same time, the American Water Works Company ("AWWC"), the parent of the Company, was the subject of an acquisition of, and subsequent partial sale of, its common stock in a transaction that was not generally warmly received by its customers in this State.

Other major utilities in the gas and electric utility industry seek and receive rate increases that frequently are a multiple of what the Company has requested in this case, and typically, at least until recently, there has not been the level of public concern expressed to the Commission about the WVAWC rate filings. It appears that the essential nature of water (the perception that it "flows free" in our rivers), the necessity of clean safe water to our existence, the nature and frequency of the earlier rate increases, the perceived loss of the "local flavor" of its ownership, and the Company's apparent difficulty in explaining to the public the reason for, and nature of the rate increases, have made those rate increases a subject that has provoked increased levels of public protest at the Commission. In addition, the Company, as witnessed by its testimony in this case, has now come to expect and argues for the same sort of "cutting edge" ratemaking treatment of which it availed itself in the rapid expansion years and much better economic conditions of the 1990s.

On March 28, 2008, the Company, in *West Virginia American Water Company*, Case No. 07-0998-W-42T ("2007 Rate Case"), received a $14.5 million dollar rate increase pursuant to a settlement that all parties, including the Company, agreed was fair and reasonable. The Commission approved that settlement. On April 30, 2008, little more than a month after receiving the $14.5 million in additional revenue, the Company filed a notice of intent to file another rate case. On May 30, 2008, barely two months after receiving approval of that $14.5 million dollar rate increase settlement, the Company filed this rate case seeking an additional $14,755,000. It is that requested rate increase that we are now called upon to decide.

One of the central arguments advanced by the Company in this proceeding is that, because of the way the Company is regulated (actually much the same as other utilities are regulated), it is difficult for the Company to meet revenue and rate of return expectations at the parent company level and in the "real world" financial community.

Something, however, is sorely missing in the Company's testimony. That is the extent to which the Company made diligent efforts to live within the total revenues that resulted from the last rate case and to which the Company freely agreed. The Company, at the time of making its May 2008 filing had the impact of less than two months of the $14.5 million annual increment in revenues approved in the 2007 Rate Case when it filed this case.

It is difficult to believe that the Company, in generating another rate case within 60 days of its last rate order, gave meaningful contemplation and consideration to how it might operate differently in order to achieve its authorized rate of return or what efforts it might take to produce a reasonable financial performance within a budget that recognized the revenue limits of its last rate case. It would have been commendable if the Company had concluded that, while the 2008 settlement (the $14.5 million) was not everything that it had originally asked for, it was a reasonable settlement proposal that the Company had supported and to which it had agreed. Such an attitude should have led the Company management to plan for ways to live within its income rather than to plan for an immediate new rate increase request.

The Commission would like to have seen some acknowledgment of the possible need for belt tightening; some indication of possible deferral or reconsideration of capital projects; some effort to operate in a more conservative manner; some possible deferral of acquisitions; or some expressed understanding and concerns for the financial hardships facing its customers that were beginning to become evident even in early 2008. These statements might have required the Company to attempt to lower its public profile, but the Company could also have expressed its concern that it must balance its historic spending patterns and the interests of its shareholders with the interests of its customers, employees, and the State of West Virginia. The Company could have acknowledged that its customers are having a tough time with their expenses, including the rates of the Company, and that the Company would be looking closely at its budget and operations to see if, for at least the next year or so, the it could live within the revenues generated by the last rate proceeding. It, instead, immediately filed another rate case.

One of the precepts of the Company's current rate case is that the Company is consistently unable to achieve its authorized rate of return. While the Commission is concerned about the Company's apparent consistent inability to achieve its authorized rate of return, we are not willing to accept the statement that the shortfall is caused entirely by (i) the Commission not granting an adequate level of revenues or (ii) backward or regressive regulation.

The Commission is charged by statute with allowing the lowest reasonable rates for utility service. In exercising our rate jurisdiction the Commission must make some difficult choices between investment levels affecting service, compensation and benefits affecting hard working employees of the Company, and other factors that contribute to the Company's overall revenue requirements. The result of these choices that we must make is a rate order that establishes the level of customer bills that will provide the bulk of the Company's

revenue until its next rate changes. We try to be fair and reasonable in our approaches and to calculate as best we can, based on reliable evidence, the level of rates necessary to cover the Company's cost of service in the rate year. After we have performed our jobs, though, the utility management has a responsibility to treat the overall revenues that result from our rate order as a budget that they should strive to live within. WVAWC's repeated requests for more and more revenue to achieve the authorized rate of return that the Company says it cannot meet might be perceived as turning regulation on its head. Every utility must recognize that achieving an authorized rate of return is a function of both generating revenues and monitoring, controlling or even cutting costs.

The Commission appreciates that these are difficult times. We also appreciate what WVAWC has done in extending potable water service within the State, but we expect to see some meaningful discussion in its case about cost control or cost cutting aspects of the Company's operations, and not simply a one-sided effort to increase only the revenue side of the ratemaking equation.

The Commission has approached this case well versed in its statutory requirements to grant the Company a reasonable and fair level of revenue consistent with the approaches it takes with other major utilities. The Company is not entitled to extraordinary or different treatment on its expenses or its rate base simply because it runs a good operation and serves its customers with a good utility product or service. The Commission expects that of all of the utilities under its jurisdiction. To the extent that the Company has met its burden of proof to demonstrate by the preponderance of credible evidence that (i) it faces increases in quantifiable (known and measurable) costs or expenses or declines in revenues and (ii) it should receive the same ratemaking treatment as (or different from) other utilities, the Commission has considered the record in that regard. This commitment to fair ratemaking treatment in this case is being made, however, with the very real expectation that the Company will examine its operations and take the necessary steps, in these dark and difficult financial times, to operate in as prudent and fiscally conservative manner as the citizens and ratepayers of West Virginia are being required to do.

The Commission has decided only two fully litigated rate cases filed by the Company in the last fifteen years, and has not had a fully litigated rate case involving the Company since 2003 in *West Virginia-American Water Company*, Case No. 03-0353-W-42T (Commission Order dated January 2, 2004) ("2003 Rate Case").[1] To determine the proper disposition of the Company request, the Commission reviewed all testimonies, briefs, motions, letters of protest and support, and other filings made by the parties and protestants. In addition to our review of the written materials submitted in this case, the Commission also conducted two public protest hearings and a five-day evidentiary hearing. The Commission

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[1] In referencing the 2003 Rate Case Order, we are referring to the double-spaced Order available on the Commission's website at:

http://www.psc.state.wv.us/Scripts/FullTextOrderSearch/ViewArchiveDocument.cfm?CaseActivityID=107990&Source=Archive

has given careful consideration to all issues raised in this case in reaching its decision.

Before moving on to the specific issues in this case, we note the positions of the Staff and the CAD in this proceeding. Both the Staff and the CAD have recommended that the Commission reduce the Company revenue requirement, with the Staff arguing for a $4,742,859 decrease in revenues and the CAD recommending a $3,107,530 decrease in revenues. The Staff and the CAD have disagreed with the Company on a number of issues and presented widely differing conclusions on the Company financial position and revenue requirement. Just as in the 2003 Rate Case, the Commission has the opportunity to address a wide range of issues that, once resolved, will hopefully assist in narrowing the contested issues in future Company rate cases.

After an evidentiary hearing and review of all of the submitted evidence and argument, the Commission authorizes a return on equity of 10%, an overall return of 8.098%, on a rate base of approximately $414.7 million, and a revenue requirement of approximately $124.4 million. This represents an approximate $4.2 million , or 3.5%, increase in Company revenue at current rates, as set forth in Appendix A. As set forth in Appendix B, the Commission authorizes a rate increase of 3.5 percent applied equally across the board to all customer classes, except public fire service (these rates remain frozen as result of a prior Commission order).

## PROCEDURAL HISTORY

On May 30, 2008, WVAWC made a tariff filing to increase its rates and charges pursuant to the Commission's *Rules For the Construction and Filing of Tariffs* (*"Tariff Rules"*), 150 C.S.R. 2, for furnishing water utility service to more than 167,700 customers in the Counties of Boone, Braxton, Cabell, Clay, Fayette, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Mason, Mercer, Putnam, Raleigh, Roane, Summers, Wayne and Webster, to become effective on June 30, 2008. The Company explained that it was seeking an additional $14,755,578 in annual revenue, an increase of approximately 12.37%. The Company proposed to collect this additional revenue through an across-the-board rate increase to all customer classes (with the exception of public fire service). Rates for private fire protection would increase 12.90%.

In its filing, WVAWC stated that, in addition to its rate request impacting its own customers, the rate request will also directly or indirectly affect the following utilities or entities pursuant to Commission-approved agreements providing that the water rates of the following entities are in whole or part based on WVAWC rates: Boone County Public Service District, Cumberland Road Public Service District, Town of Danville, Town of Eleanor, Kanawha County Regional Development Authority, Lashmeet Public Service District, Lewis County Economic Development Authority, New Haven Public Service District (Fayette County), Oakvale Road Public Service District, Putnam County Building Commission, and Salt Rock Water Public Service District.

The resale customers of the Company will also be affected and include Bluefield Valley Water Works Company, Flatwoods-Canoe Run Public Service District, Green Valley Public Service District, Lavalette Public Service District, Ohio-American Water, and South Putnam Public Service District.

On June 2, 2008, the Consumer Advocate Division ("CAD") filed a petition to intervene, and the Commission granted that intervention in an order entered on June 26, 2008.

On June 6, 2008, the Company filed public and confidential versions of its workpapers.

On June 24, 2008, the South Bluefield Neighborhood Association ("SNBA") filed a petition to intervene, and the Commission granted that intervention in an order entered on July 30, 2008.

On June 26, 2008, the Commission issued an order suspending the Company proposed rates and charges until 12:01 a.m., Thursday, March 26, 2009.

On July 3, 2008, the Company filed nineteen affidavits of publication from various newspapers around the State as evidence that it published a Notice of Change in Rates in this matter. On July 30, 2008, the Company filed a Certificate of Posting, Publication, and Separate Mailing of Notice of Customers of this proceeding as evidence that it had complied with the notice requirements.

On July 30, 2008, the Commission issued an order setting a procedural schedule, including an evidentiary hearing in Charleston, West Virginia. The Commission directed its Administrative Law Judge Division to hold public comment hearings as well.

On July 30, 2008, the Company pre-filed its direct testimony and a revised Rule 42 Financial Exhibit. The revised Rule 42 Exhibit supported an increased revenue requirement of $15.878 million, although the Company stated that it was not seeking to increase the additional revenue in this case above the $14.756 million it had originally requested and noticed.

On September 22, 2008, the Company filed its Demand Study in response to the Commission March 18, 2008 order in Case No. 07-0998-W-42T. On September 30, 2008, the Company filed its Updated Cost of Service Study and Revised Demand Study.

On October 2, 2008, the Staff filed a motion to dismiss the Company's Rule 42 Filing. The Staff suggested that the Company's filing be dismissed because (i) the Company had increased its revenue request by over $1 million in its Revised Rule 42 without notice to the public; (ii) the Company did not file a peak demand/commodity study; and (iii) the Company had not provided a copy of the AWWC 2007 Consolidated Tax return.

The Commission, through its Administrative Law Judge Division, held public comment hearings on October 7, 2008, in Princeton, West Virginia, and on October 8, 2008, in Huntington, West Virginia. The Chairman of the Commission also attended both comment hearings. The Company submitted affidavits of publication evidencing that it provided the requisite notice of the public comment hearings.

On October 24, 2009, the Commission denied the Staff motion to dismiss, concluding that the information provided in the Revised Rule 42 did not prejudice the other parties, particularly in light of the Company acknowledgment that its revenue recovery was limited to the amount of the request in the Original Rule 42 that had been the subject of public notice. The order also stated that the Company was under no obligation to file a peak demand/commodity study as it had sought an across-the-board rate increase, and that the Company had provided the AWWC 2007 Consolidated Tax return. *Id.* at 3.

On November 6, 2008, Staff and CAD pre-filed their respective direct testimonies.

On November 25, 2008, the Company pre-filed its rebuttal testimony, and Staff pre-filed supplemental direct testimony and rebuttal testimony.

On December 4, 2008, the Commission issued an order directing the Company to amend a previously filed motion for protective treatment or to state that it no longer sought protective treatment.

On December 5, 2008, the Company filed its Amended and Restated Motion for Protective Order.

The Commission conducted evidentiary hearings from December 8, 2008, through December 12, 2008, at the Commission offices in Charleston, West Virginia. The Company, CAD and Staff appeared by counsel. The SBNA did not appear at the hearing and did not submit pre-filed testimony or other pleadings in the case. The Commission heard public comment on December 8, 2008, in Charleston prior to the start of the evidentiary hearing. In addition to the comments at the public comment hearings, numerous public comment letters were filed. For ease of reference, the Commission will abbreviate cites to the evidentiary transcript as follows:

December 8, 2008 hearing – "Tr. I"
December 9, 2008 hearing – "Tr. II"
December 10, 2008 hearing – "Tr. III"
December 11, 2008 hearing – "Tr. IV"
December 12, 2008 hearing – "Tr. V"

On January 28, 2009, the CAD filed a motion to supplement the record. The Commission denied that motion in an order entered February 27, 2009.

On January 27, 2009, Staff filed a proposed order. On January 28, 2009, the Company filed a proposed order and initial brief, and the CAD filed an initial brief.

On February 6, 2009, the Company, Staff and CAD filed their respective reply briefs.

## DISCUSSION

### RATE OF RETURN

*Overview*

The capital structure of a utility is comprised of the various types and sources of capital supporting its net utility assets (rate base). A utility capital structure will normally reflect the amount of capital acquired through borrowing (debt), the issuance of stock (common and preferred), and other paid in capital contributions from stockholders. Capital structure detail for purposes of cost of capital calculations normally divides debt into component parts, such as short term and long term debt, and equity capital into common equity and preferred equity. The measurement of the ratio of individual components of capital to the total capital of the utility establishes the relationship between the various capital sources for subsequent use in a formulaic approach to determine a composite weighted cost of capital.

To determine cost of capital, each type of capital is calculated as a percentage of the total capital. The cost rate for each type of capital (long term debt, short term debt, preferred stock, and common equity) is then multiplied by that type of capital's percentage of the total capital structure to derive a weighted cost of capital for each component. Those weighted costs are then added to reach a total cost of capital, which under normal circumstances equals the overall rate of return that a utility is authorized to earn.

The inclusion of short term debt in the capital structure is often a more contentious issue than one might imagine. The amount of short term debt can vary considerably over a relatively short period of time, and the market rate for short term debt can be more volatile than the rates for other forms of capital. Although short term debt percentages are usually relatively low when compared to long term debt, the variability and volatility of the short term debt components can complicate the capital structure/cost of capital evaluations.

The Commission has historically used a variety of techniques, and its judgment and experience, to determine a reasonable capital structure. The Commission is not bound to either a test year capital structure or a projected capital structure, and it may review historic, projected and hypothetical capital structures to arrive at a structure that is reasonable, fairly balances the interests of the customers and the utility and produces the lowest reasonable overall revenue requirements while maintaining financial integrity and flexibility for the utility. *West Virginia Water Company*, Case No. 84-008-W-42T (Commission Order, January 25, 1985) at p. 17, quoting *Appalachian Power Company*, Case No. 83-897-E-42T,

(Commission Order, December 28, 1984) at p. 3.

## Capital Structure

### *Positions of the Parties on Capital Structure*

Testimony and other evidence pertaining to capital structure and rate of return was introduced by four witnesses in this proceeding: Michael A. Miller and Dr. Michael J. Vilbert, on behalf of the Company, Randall R. Short, on behalf of the CAD, and Steven M. Kaz on behalf of the Staff. The respective parties advocated the following capital structures and cost rates:

| | Revised Company | | CAD | | Staff | |
|---|---|---|---|---|---|---|
| Type of Capital | Percent of Total (%) | Cost Rate (%) | Percent of Total (%) | Cost Rate (%) | Percent of Total (%) | Cost Rate (%) |
| Common Equity | 40.437 | 11.75 | 40.166 | 8.75 | 40.599 | 8.07 |
| Preferred Equity | 0.516 | 8.65 | 0.524 | 8.65 | 0.527 | 8.62 |
| Long Term Debt | 54.705 | 7.13 | 54.455 | 6.52 | 57.353 | 6.54 |
| Short Term Debt | 4.320 | 3.96 | 4.854 | 3.50 | 1.521 | 2.00 |

Company Ex. MAM-R, MAM-13; CAD Ex. No. 1 at 2-3; Staff Ex. SMK-D. Additionally, the Company amended its proposed capital structure though its rebuttal testimony to reflect the execution of a long term debt note on November 25, 2008.

The Company initially proposed a capital structure based on actual capitalization ratios and costs as of December 31, 2007, the last day of the test year, modified to reflect an anticipated long term debt issuance in the autumn of 2008. The Company later updated its filing to reflect more current information and estimates. Company Exs. MAM-D at 23-27, and MAM-5. This proposed capital structure was updated a second time with the filing of the Company rebuttal testimony to reflect the issuance cost of the new long term debt, more current short term debt cost estimates, and the correction of a mistake noted by Staff. Company Ex. MAM-R at 17-19. The Company proposed capital structure is summarized on Company Ex. MAM-10.

Staff based its recommended capital structure on the actual capital structure of the Company at the end of the 2007 test year, adjusted to reflect the early call of a $13 million, 5.9% note.

The CAD proposed capital structure is based on the Company's average capital components for each of the fiscal quarters in 2008.

The Company submitted testimony objecting to the capital structure used by the CAD and Staff. A review of the Company rebuttal testimony reveals that although there was some discussion of known and measurable changes to capital structure not reflected in Staff witness Kaz's calculations, the major objections of the Company were not with the capital structure, but with the cost rates used by the CAD and Staff. Company Exs. MAM-R at 20-30, MJV-R at 39-40. The Company also updated the information concerning its capital structure to reflect $37 million in long term debt issued by American Water Capital Corporation ("AWCC") on behalf of the Company, shortly before the hearing commenced, at a rate of 10%. *See,* Company Exs. MAM-R at pp. 17-19, MAM-11.

***Commission Discussion and Decision on the Component Weights of Capital Structure***

The Commission will discuss the cost rates recommended by the parties in the discussion of the cost of capital. With regard to the capital structure, or percentage of each capital component to total capital, the recommendation of the CAD is almost identical to that proposed by the Company. The Company and CAD each proposed equity capital as a percentage of total capital that is almost identical to the Staff equity capital structure (Company 41.0%; CAD 41.7%; and Staff 41.1%). The debt capital percentages proposed by the Company and CAD are different from the Staff proposed debt capital in the relative mix of short term and long term debt; however, the total debt capital for each of the parties is almost identical. (Company 59.0%; CAD 58.3%; and Staff 58.9%). The Commission finds that the capital structure recommended by CAD is consistent with the Commission historic practice of attempting to use the most recent actual data available, and we will adopt the CAD proposed capital structure percentages for purposes of calculating the overall cost of capital in this case.

**Cost of Preferred Equity and Long Term Debt**

***Positions of the Parties***

***Preferred Equity***

The parties have provided different calculations and different recommendations with regard to the cost of preferred equity and the cost of long term debt. After adjustments to their recommendations as the case progressed, the parties' recommendations are generally similar on the cost of preferred equity.

The cost of preferred equity is largely a matter of contract, and it is not surprising that all parties calculated the cost of preferred equity at about the same percentage. The CAD and Company recommended a cost of preferred equity of 8.65%, and Staff recommended a cost of preferred equity of 8.62%.

*Long Term Debt*

The CAD and Staff differ from the Company's calculated cost of long term debt mostly because of their disagreement with a recent debt issue at a 10% cost rate. The Company originally supported a cost of long term debt of 6.52%. The Company calculation included actual debt outstanding with adjustments to reflect the issuance of new debt of $60 million projected for December 2008, at an expected interest rate of 6.12%. The Company described the need for the new debt to (i) replace the $40 million 6.31% long term bond maturing on December 30, 2008, (ii) reflect 2008 sinking fund amounts of $4.980 million on its 6.87% series long term debt, and (iii) replace short term debt of $15 million. *See*, MAM-D at p. 25, and Ex. MAM-5, p. 2 of 6 attached to direct testimony.

In its July 2008 rebuttal testimony, the Company made certain adjustments to its long term debt rate to arrive at its final calculated cost of long term debt of 7.13%. This change occurred because the Company eliminated the projected $60 million new issue from its long term debt. The Company also included $13 million in long term debt at the historic debt rate of 5.9%, although that debt had been called in 2007 because of the Initial Public Offering ("IPO"). The Company also reflected $37 million in new debt at an interest rate of 10% for a note executed with AWCC in November, 2007. *See,* MAM-R at p. 17. The results of these modifications to the Company long term debt changed the weighted cost of long term debt as presented by the Company from 6.52% to 7.13%. Ex. MAM-R MAM-10 attached to rebuttal testimony.

Both the CAD and Staff objected to the issuance and inclusion of new 10% debt to AWCC. The CAD questioned the prudence of the Company decision to lock in $37 million of extremely expensive long term debt at a time of enormous volatility in the bond markets. CAD further asserted that " [T]his costly decision by WVAWC was made on scant advice (given not to WVAWC but to another AWW subsidiary) that included no discussion of alternative financing options, such as the brief use of short term debt . . . ." Tr. II at pp. 97-98, CAD Cross Ex. 5. The CAD also argued in its brief that the issuance of high cost debt, particularly under the unusual circumstances of the AWCC debt, raised the distinct possibility that the high cost debt was intended to influence the Commission to adjust the Company cost of equity upward. CAD Initial Brief at pp. 14 and 15.

The Staff addressed this issue in its proposed Order. Staff argued that the Commission was not given sufficient time to thoroughly review the facts and circumstances of the $37 million issue. Staff suggested that the Commission should question whether the record sufficiently shows that the Company financing of $37 million at 10% in November 2008 was a prudent decision, given the limited information available to support the decision to obtain this note. Staff argued that the Commission is not able to review this transaction properly in this rate case because of the lateness of when it was brought to the attention of the Commission and the parties. Staff argued that the Commission should find that it is unreasonable to use the November 2008 long term debt issuance in its calculation of the cost of long term debt. *See,* Staff Proposed Order at p. 25.

*Short Term Debt*

Turning to the cost of short term debt, there is little difference between the calculated cost as presented by the Company and CAD. Staff proposes a much lower cost of short term debt. The Company recommended short term debt rate is a forecast that adds the latest quarter spread between its cost of short term debt and the Fed Funds rate to the August 22, 2008 Value Line forecasted Fed Funds rate for 2009. The CAD recommended short term debt rate is based on the Company actual cost rate for the first six months of 2008. The Staff recommended short term debt rate is based on the actual cost levels from June 2008 through August 2008 adjusted for the subsequent decrease in the Fed Funds rate in October 2008.

*Commission Discussion and Decision on the Cost of Preferred Equity and Debt*

As summarized in the Overview, above, there is little difference among cost of preferred equity recommendations. The Commission will adopt a cost rate of 8.65% for preferred equity.

Turning to the more contentious and significant issue of the cost of long term debt, the Commission is concerned about the limited opportunity to investigate and analyze the reasonableness of the November 2008 loan obtained from AWCC. The interest rate appears to be very high, and there is little information in the record regarding the necessity for issuing this long term debt, the availability and alternatives that the Company could have considered to that debt, and whether any alternatives were seriously considered. Although the Company filed a copy of the note between it and AWCC, there is information that cannot be readily obtained from that document, and no serious discussion about the meaning or import of the underlying debt that was redeemed or replaced by this 10% debt. The note is for a term of 30 years, but the underlying terms and conditions of the loan are not divulged on the document filed with the Commission. The Commission cannot tell from the record if the Company has an option to prepay the note without penalty. All we know regarding the principal payment is that the principal is due and payable in accordance with the terms that AWCC made when it acquired the funds for the loan to WVAWC.

The Commission notes that the 10% interest is due and payable under the terms of the note with AWCC. Because this debt is in place and is an obligation of the Company, the Commission will allow the 10% interest rate on the $37 million to be reflected in the cost of long term debt in this case. In making this decision, the Commission is not making a determination that the terms and conditions of the note in question are reasonable. We are also placing the Company on notice that it should vigorously investigate alternatives that would allow it to retire this note as soon as possible at an interest rate lower than 10%. We expect the note to be refinanced at a lower rate and without penalty in time to be reflected in the cost of debt for the Company's next rate case. If the note cannot be retired earlier than 2038 without penalty because of the provisions of the note, the Commission may find those provisions to be unreasonable, imprudent and contrary to the public interest. In that case, the Company and AWCC are placed on notice that the Commission will make a ratemaking

adjustment for the impact of that note.

With regard to interest on short term debt, the Commission would normally not look favorably on projected short term interest rates as far in the future as has been done by the Company. Short term rates, however, are in a state of flux because of an unprecedented financial and economic crisis being experienced in the United States and around the world. The Commission would not be inclined to accept purely historic interest rates that might be peaking at extraordinarily high rates under different circumstances if there was some evidence that the rates might drop in the immediate future. In this case, however, the current rates are unusually low rates that are projected by some to increase in the immediate future. While this projection may reflect a hope that economic and financial conditions will improve in 2009 or early 2010 at the latest, it is a hope that is shared by all communities, and extraordinary efforts are being put forth to improve the financial and economic climate within that time frame. Furthermore, the Commission notes that the CAD has also recommended a short term interest rate that is above the 2% rate recommended by Staff and below the 3.96% rate projected by the Company. While the Staff rate may be on the low side, the evidence supports a conclusion that the Company rate is on the high side. The average of the three recommendations is 3.15%. The Commission will use 3.15% for the cost of short term debt.

## Return On Equity and Resulting Rate of Return

### *Overview*

The Commission has long held, consistent with controlling authority, that utility rates should allow a public utility the opportunity to earn a level of revenues sufficient to attract capital in the competitive money market, balanced with the interests of the consuming public in receiving fair and reasonable rates. *Bluefield Water Works and Improvement Company v. Public Service Commission*, 320 U.S. 679 (1923); *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 64 S.Ct. 281 (1944); *Permian Basin Area Rate Cases*, 390 U.S. 747, 88 S.Ct. 1344 (1968); *Monongahela Power Company v. Public Service Commission*, 276 S.E.2d 179 (W. Va. 1981).

While this summary "goal" of utility ratemaking is easy to state, the calculation of an appropriate cost of common equity is generally one of the most contentious issues in a rate proceeding, and it is certainly true in this case.[2] It is also typically not understood by ratepayers.[3] It is not unusual to find that the witnesses presenting testimony on the cost of

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[2] The total prefiled direct, rebuttal and hearing testimony on the issue of Rate of Return and Capital Structure was voluminous consisting of well in excess of 600 pages. The Commission will not attempt to summarize all of that testimony.

[3] A common question raised in protest letters and at public comment hearings is why the Commission grants higher returns to "these utilities" than the typical investor can get on

common equity capital using the same or similar methodologies, but ending at significantly different results. The Commission has noted in the past that, "all of these methods represent artful analyses rather than exact science and none of them can be said to produce a finite 'correct answer' to the exclusion of the others. These studies are useful in providing trends and data that is susceptible to interpretation, but the ultimate answer regarding investor expectations must rely heavily on the judgement of the Commission." *Appalachian Power Company*, Case No. 91-026-E-42T (Commission Order, November 1, 1991) at p. 4.

In determining the cost of common equity for a regulated utility, the Commission must look at investor expectations of stock price, earnings, dividends and book value for entities having similar characteristics, including similar risks. The Company stock is not publicly traded, is owned virtually entirely by AWWC and, accordingly, the cost of equity capital witnesses in this case had to make various assumptions and rely on comparable companies when determining their views of an appropriate return on equity.

***Positions of the Parties on Return on Common Equity***

The Company recommended a return on equity ("ROE") of 11.75%. The Company witness on ROE, Dr. Michael J. Vilbert, conducted several analyses. He used two sample groups of regulated companies, one consisting of regulated water utilities ("water sample") and one consisting of natural gas distribution companies ("natural gas sample") Dr. Vilbert prepared a discounted cash flow ("DCF") analysis on each group, but stated that he relied principally on his second analysis, a modification to a risk premium approach, often referred to as a Capital Asset Pricing Model ("CAPM"). Instead of the more traditional DCF or CAPM that this Commission has considered many times in the past, and that was presented by both the Staff and CAD cost of capital witnesses, Dr. Vilbert modified the results of each of these analyses to take into consideration the financial risk associated with the level of equity within the Company capital structure. To reflect his modified approach, he calculated the after-tax, weighted-average cost of capital ("ATWACC") for each of his sample firms. Company Ex. MJV-D at pp. 2-3. He then applied those results to the Company's market value capital structure and derived the return on equity required to produce the ATWACC for the Company. Dr. Vilbert derived a cost of equity range of 11.50% to 13.50%, and stated that his analyses supported the Company requested ROE of 11.75%. Company Ex. MAM-D at p. 28; and *see generally*, Company Ex. MJV-D.

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a certificate of deposit? Certificates of Deposit typically reflect low risk and government guarantees of principal. Not only is there no guarantee of earning anything on equity investments (as opposed to stated interest rates on Certificates of Deposit), there is no assurance that the principal amount will be recoverable by the investor. Therefore, the authorized return on equity must be higher where the corresponding risk is higher. The Commission certainly looks at the current market rate for low risk investments like Certificates of Deposit or Federal Treasury Bills. We note, however, that the determination of a reasonable return on equity starts at those low risk levels, but adds risk factors to account for business and financial risk.

Mr. Short on behalf of the CAD recommended 8.75% as a reasonable ROE, based primarily on a DCF supported ROE range of 8.40% to 8.90%. CAD Ex. 1 at pp. 20-31. Although he stated a preference for the DCF model, Mr. Short also performed several CAPM calculations, and estimated the Company ROE at a mid-point of 8.22% using short term Treasury bills for his risk free CAPM component and a mid-point of 8.91% using longer term Treasury bonds for the risk free component. CAD Ex. 1 at 31-35. Mr. Short also provided an "end results" analyses with his prefiled testimony. CAD Ex. 1 at pp. 36-37.

Staff applied its traditional method for calculating a recommended ROE. Staff witness Kaz's recommendation of a 8.07% ROE is the arithmetic average of the results of his DCF (7.17%) and CAPM (8.97%) analyses using a group of sample water utilities. Staff Ex. SMK-D at 5-11, Appendix SMK-1, Schedules 2-4. Mr. Kaz also indicated that he tested his recommended ROE of 8.07% with certain "end results" tests, such as long term interest coverage ratios, dividend payout ratios and internal generation of cash relative to construction expenditures ratios.

As expected, these witnesses by and large defended their own approach and criticized the other approaches. Mr. Kaz asserted that both Dr. Vilbert's analyses and the Company requested ROE of 11.75% were "excessive, especially considering the recent collapse of the financial markets" (Staff Ex. SMK-D at p. 16), although at hearing Mr. Kaz stated that he did not know of any authority to support his contention. Tr. II at p. 203. Mr. Kaz characterized Dr. Vilbert's ATWACC calculations as "the double counting of investors' required premiums," and took issue with Dr. Vilbert's use of a natural gas company sample group. Staff Ex. SMK-D at pp. 16-17.

Dr. Vilbert submitted rebuttal testimony to the ROE recommendations of both Mr. Short and Mr. Kaz. He continued to support his modified CAPM approach and criticized the CAD and Staff witnesses for their failure to recognize and quantify the greater financial risk of the Company, owing to a lower proportion of equity in its capital structure as compared to the companies used in the sample.

Dr. Vilbert took issue with Mr. Short's estimation of dividend growth rates and yields in the DCF analysis, his use of geometric averages and selection of short term risk free rates in the CAPM, and his attempt to justify his recommendation through an analysis of current economic conditions. Company Ex. MJV-R at pp. 12-32. Dr. Vilbert maintained that, under present economic conditions, particularly the efforts of the federal government to stimulate economic growth through interest rate reductions, Mr. Kaz and Mr. Short placed undue reliance on short term Treasury Bills as the "risk-free" rate of return in their respective CAPM analyses Company Ex. MJV-R at 22. He also criticized Mr. Short's CAPM long term risk-free rate. He argued that Mr. Short's ROE, is understated by 25-50 basis points as a result of mismatching the cost rates for 10-year Treasury bonds (used for one of his selected risk-free rates) and 20-year Treasury bonds (used for his market risk premium). Company Ex. MJV-R at p. 23. Dr. Vilbert also criticized Mr. Kaz's analyses for not excluding certain of his DCF sample companies that produced unreasonable yield or growth results and argued

that Mr. Kaz misapplied his "end results" tests. Company Ex. MJV-R at pp. 32-39.

Company witness Miller also criticized the ROE recommendations of the CAD and Staff. Mr. Miller asserted that the Staff and CAD ROE recommendations failed to reflect current economic conditions faced by the Company and AWWC, particularly in the context of the recent Company issuance of long term debt at 10.0%. Company Ex. MAM-R at pp. 31-35. Comparing the CAD and Staff ROE recommendations to returns recently authorized by other commissions that regulate American Water operating subsidiaries, Mr. Miller asserted that these comparative calculations were relatively easy, and that a prudent investor might make them in evaluating the lower ROEs recommended by Mr. Short and Mr. Kaz. Company Exs. MAM-R at pp. 35-40, MAM-15, MAM-16. Mr. Miller also took issue with the CAD and Staff calculations of long term interest coverage ratios and other "end results" tests. Company Exs. MAM-R at pp. 41-44, MAM-17.

The CAD stated that the cost of equity analysis by Dr. Vilbert "continues WVAWC's parade of rejected theories and increasingly complicated methodologies by which it attempts to wring out, without any apparent concern or respect for approved Commission approaches and traditional regulatory principles, higher authorized rates of return." CAD Brief at p. 8. The CAD argued that the financial risk adjustment made by Dr. Vilbert is similar to the leverage adjustment rejected by the Commission in the 2003 Rate Case. *Id.* CAD noted that contrary to Commission past practice, Dr. Vilbert rejected the use of his sample of water utilities altogether. *Id.* The CAD objected to Dr. Vilbert's reasoning in making upward adjustments to low results and disregarding low results altogether. *Id.* at p. 9.

The CAD was particularly critical of Dr. Vilbert's use of the financial risk calculation. The CAD stated that even after disregarding the low results of certain companies in the water sample group and disregarding the use of a short term Treasury Bill for the risk free component of the CAPM analysis, Dr. Vilbert's calculations would still have produced a ROE result in the range of 9.67% to 10.63% before he reflected the different equity ratios of the sample companies and WVAWC. CAD Brief at p. 9. In addition to criticizing the Company for escalating its calculations of a reasonable ROE, the CAD criticized the recent Company borrowing from AWCC, arguing that the Company relies on the 10% interest rate on the questioned new debt to bolster its arguments on the cost of equity and to push its equity costs higher to reflect the cost of this new debt. *Id.* at p. 14.

The Staff opposed the Company ROE approach, particularly the use of gas utilities as the sample group for the DCF calculation and the equity ratio financial risk calculation made by Dr. Vilbert. Mr. Kaz testified on cross examination that the relatively lower equity ratio of the Company was within the management discretion of the parent company and that WVAWC ratepayers should not be required to pay a premium for a financial risk that is chosen, by and large, by AWWC.

*Commission Discussion and Decision on Return on Common Equity*

The Commission has considered the conflicting, albeit heartfelt, testimony of the Company, Staff and CAD witnesses. The Commission has, on numerous occasions, stated, however, that recommendations of expert witnesses on cost of common equity are useful as guides, but that the determination of an appropriate cost of common equity for a utility must rest principally with the best judgement of the Commission. *See, The Potomac Edison Company*, Case No. 79-230-E-42T, (Interim Order, November 21, 1979) at p. 7; *Virginia Electric and Power Company*, Case No. 79-040-E-42T, 67 ARPSCWV 277 (Final Order, February 1, 1980); *Monongahela Power Company*, Case No. 80-058-E-42T, (Interim Order, July 18, 1980) at p. 8; *Monongahela Power Company*, Case 90-504-E-42T (Commission Order, June 11, 1991) at p. 24; *GTE South, Inc.*, Case No. 90-522-T-42T (Commission Order, May 31, 1991) at p. 17; *Appalachian Power Company*, Case 91-026-E-42T (Commission Order, November 1, 1991) at p. 4; and, *Mountaineer Gas Company*, Case No. 93-0005-G-42T (Commission Order, October 29, 1993) at p. 9.

To evaluate the guides presented to us by various witnesses, the Commission will first review the Company recommendation. Dr. Vilbert used both a water company sample and a natural gas company sample for purposes of a DCF calculation. Contrary to Dr. Vilbert's belief that the DCF calculations are "less reliable" than his other methods, the Commission believes that the DCF calculations provide valuable insight into the actual return that stockholders can and are receiving in the market. The Commission does not consider the DCF results to be "less reliable" or "unreliable". The Commission recognizes that the financial markets have been in an unusual state of turmoil with huge swings in stock prices. The Commission is also aware that several historically reliable utilities have announced dividend cuts, adding to the market price swings for those utilities and possible others. The Commission thus understands that the DCF analysis is subject to rapid change in both directions, and the Commission must take that into consideration in its analysis of the data. The Commission does not, however, find that the results of actual market price and dividend movements create an immutable barrier to the application of reasoned analysis of the DCF data. Because the Commission can assess the data in relation to the financial market disruptions taking place, it does not appear that the properly evaluated DCF results are less reliable than the results of other methods of evaluation of investor expectations.

The Commission will also not adopt the upward factoring of the Company results relative to the sample companies based on Dr. Vilbert's belief that the financial risk of lower common equity ratios can or should be reduced to a mathematical formula to increase the return on equity derived from comparable business risk companies simply because the Company has a lower equity ratio than those companies. While Dr. Vilbert's approach may have some academic support, we do not consider the Company's equity ratio as being unusual or extraordinary, and the Commission does not agree that financial risk within a range of normal equity ratios can be quantified with the mathematical precision that Dr. Vilbert's approach would imply.

The DCF results for Dr. Vilbert's water company sample ranged from 8.5% (Table MJV-7) to 11.7% (Table MJV-6).[4] Using his financial risk adjustment approach, Dr. Vilbert factors the 8.5% up to 11.4% and the 11.7% result up to 16.8%. *See,* Table MJV-8. Because the Commission does not adopt Dr. Vilbert's financial risk adjustment approach, we do not accept the 11.4% to 16.8% DCF range as being reasonable recommendations for the Company. The Commission considers the water company sample of Dr. Vilbert's data to show a DCF result ranging from 8.5% to 11.7%, or an average of 10.1%.

The DCF results for Dr. Vilbert's natural gas company sample ranged from 9.1% (Table MJV-18) to 9.2% (Table MJV-17). Using his financial risk adjustment approach, Dr. Vilbert factors the 9.1% up to 12.1% and the 9.2% to 12.3%. *See,* Table MJV-19. Because the Commission does not adopt Dr. Vilbert's financial risk adjustment approach, we also do not accept the 12.1% to 12.2% DCF range as being reasonable. The Commission considers the natural gas company sample of Dr. Vilbert's data to show a DCF result ranging from 9.1% to 9.2%, or an average of 9.15%.

The CAPM results for Dr. Vilbert's water company sample ranged from 9.4% using the short term risk free rate (Table MJV-11, Panel D) to 10.6% using the long term risk free rate (Table MJV-11, Panel A).[5] Using his financial risk adjustment approach, Dr. Vilbert factors the 9.4% up to 13.1% and the 10.6% up to 15.1%. *See,* Table MJV-12, Panel A. Because the Commission does not adopt Dr. Vilbert's financial risk adjustment approach, we do not accept the 13.1% to 15.1% CAPM range as being reasonable. The Commission considers the water company sample of Dr. Vilbert's data to show a CAPM result ranging from 9.4% using the short term risk free rate to 10.6% using the long term risk free rate, or an average of 10%.

The CAPM results for Dr. Vilbert's natural gas company sample ranged from 8.1% using the short term risk free rate (Table MJV-21, Panel D) to 9.5% using the long term risk free rate (Table MJV-21, Panel A). Using his financial risk adjustment approach, Dr. Vilbert factors the 8.1% up to 10.4% and the 9.5% to 12.6%. *See,* Table MJV-22. Because the Commission does not adopt Dr. Vilbert's financial risk adjustment approach, we do not accept the 10.4% to 12.6% CAPM range as being reasonable. The Commission considers the natural gas company sample of Dr. Vilbert's data to show a CAPM result ranging from 8.1% using the short term risk free rate to 9.5% using the long term risk free rate, or an average of 8.8%.

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[4] The Commission notes that these values exclude companies that Dr. Vilbert determined had unreasonably low results. Including all companies from his sample in the derivation of the range would result in a range from 8.5% to 10.4%.

[5] The Commission notes that these values exclude companies that Dr. Vilbert determined had unreasonably low results. Including all companies from his sample in the derivation of the range would result in a range from 8.0% to 9.5%.

Although Dr. Vilbert argued that the Commission should rely on the natural gas company sample group, the Commission notes that the results of the various analyses for that group are lower than for the water group. To avoid additional complications of assessing business risk differences, the Commission has expressed a preference for not using companies other than comparable utility companies offering similar service for DCF and CAPM calculations. *See, e.g.*, 2003 Rate Case Order at p. 41. Although the Company witness asserted that the Commission should rely on the natural gas companies results, which produce a lower ROE, the Commission believes it is reasonable to consider the results of the natural gas group, but to focus primarily on the water utility sample group.

In summary, the Commission analyses of the data, even after allowing for Dr. Vilbert's exclusion of companies that he believes have an unreasonably low DCF or CAPM result, considering the use of Dr. Vilbert's natural gas company sample group, and considering the results of a CAPM analysis that uses a long term risk free rate, the Commission average results of Dr. Vilbert's data for the water group DCF, and natural gas group DCF are 10.1% and 9.15% respectively. The Commission average results for Dr. Vilbert's water group CAPM, and natural gas group CAPM are 10% and 8.8% respectively.

The Commission notes that Dr. Vilbert also provided alternative CAPM calculations to correct some deficiencies that he testified were present in a simple CAPM analysis. He referred to these alternative analyses as ECAPM analyses. While the Commission prefers the traditional CAPM analysis used in the past, the Commission does not disregard Dr. Vilbert's ECAPM analyses. Without providing a lengthy discussion of the ECAPM calculations and the results under different assumptions within Dr. Vilbert's ECAPM analyses, the Commission notes that the range of results for the water company sample and the natural gas company would move upward by between 10 and 70 basis points.

Turning to the CAD ROE recommendations as presented by Mr. Short, the Commission notes that Mr. Short continues to use a wide range of possible growth rates in his DCF calculations. While the Commission does not reject any of Mr. Short's testimony, we find it difficult to determine which of his growth rates went into his determination of a growth rate range of 5.25% to 5.75%. Mr. Short's data reflecting 5-year projected growth rates includes some very low projected book value growths as compared to projected growth in earnings and dividends. While he arrived at an average growth rate for the five-year projected data of 5.67%, including the low book value growth projections, the average of the earnings and dividends growth in that calculation are a much higher 6.9%.

Mr. Short relied, at least to some extent, on historic growth rates that included negative growth data. This resulted in the historic growth rate data including averages of 3% for the five-year historic average and 4.7% for the ten-year historic average.

The Commission believes it is appropriate in this case to place less weight on historic growth rate data simply because of the inclusion of negative growth rates and the low average values that result from the historic averages. Giving more weight to the projected

growth rates in Mr. Short's data the Commission finds that a growth rate between 5.7% and 8.7% is more reasonable than Mr. Short's range of 5.25% to 5.75%. The midpoint of this range is 7.2%, which when added to Mr. Short's DCF yield component of 3.15% produces a ROE result of 10.35%.

Turning to Mr. Short's CAPM calculations, the Commission is concerned by his mixing of an arithmetic and geometric market risk premium in his calculations. In the past, the Commission has expressed a preference for the arithmetic mean CAPM calculation. Also, we note that Mr. Short prepared CAPM calculations using both a short term risk free Treasury Bill rate and a longer term Treasury Bond rate for his risk free CAPM component. In the past, the Commission has expressed a preference for the short term T-Bill rate as a risk free component. However, as noted above, the country is facing an unprecedented economic and financial crises that renders significant unexpected results in some of the measures of cost of capital that the Commission has used in the past. Therefore, the Commission considered various combinations of cost of capital components in this case as compared to components discounted, or rejected, in the past.

Focusing on the arithmetic mean market risk premium in Mr. Short's CAPM calculations, and using both the short term T-Bill rate and longer term Treasury Bond rate for the risk free component, the Commission arrives at a range of 9.0% to 9.6% for a CAPM based ROE from Mr. Short's data.

Staff witness Kaz presented the Staff position on ROE. His DCF calculations included some companies with very low indicated ROEs. The Commission does not fault Mr. Kaz for his objective approach of not applying the end result test to his observations and calculations by discarding certain results and retaining others. However, the Commission notes that some of the low values, taken by themselves, would not produce even a 2.0 times interest coverage. The Commission does not disregard low numbers just because they are low. However, when the low ROEs would produce an end result, using Mr. Kaz's end result evaluation approach, that appears to be unreasonable the Commission concludes that it is appropriate to give that value less weight, or to even exclude it altogether. Following this approach, the Commission has determined that Mr. Kaz's DCF average would be 9.0% instead of the 7.17% reflected in his testimony.

The Commission conducted a similar evaluation of the CAPM results reported by Mr. Kaz. In his testimony and exhibits, he arrives at an average CAPM based ROE of 8.97%. However, discounting those results that would not produce an interest coverage equal to 2.0 times, Mr. Kaz's CAPM data supports a calculated ROE of 9.9%.

The Commission determines that an ROE of 10% is reasonable based on the Commission's analysis of the data presented by the cost of capital witnesses. The Commission also applied the end result tests suggested by Mr. Kaz to this 10% ROE allowance and the other Commission decisions made with regard to capital structure and cost of debt. The end result analysis is not performed to determine a reasonable ROE for the Company; instead, the

Commission performs an extensive analysis to parse the data and arrive at a ROE that is supported by the evidence and acceptable to the Commission. In the past and in this case, the Company has strongly condemned the Staff end result analysis. The Commission agrees that Mr. Kaz may have made some statements to indicate that certain end results, such as a 1.5 times interest coverage ratio, would indicate a reasonable end result, and in this instance the Commission does not agree. For a measure of "reasonableness" the Commission would advise that a higher interest coverage would be necessary. The interest coverage of 1.5 times is the coverage below which the Company cannot issue its General Mortgage Bonds, and should not become the "zone of reasonableness." It is with that in mind that the Commission performs an end result interest coverage test, not to determine a reasonable ROE, but to determine if an ROE arrived at independently of the end result test is reasonable for the Company under the circumstances of this case.

The Commission has determined that a 10% ROE will result in an interest coverage of approximately 2.3 times While such an interest coverage might not be appropriate for triple A rated debt, it is reasonable for the Company under the circumstances of this case.

## RATE BASE

### Terminal Treatment

#### *Overview of Laws and Policy of Commission*

The term "rate base" refers, generally speaking, to a utility's net investment in utility plant and working capital necessary to provide utility service. Principally, rate base is financed by various sources of capital, including various forms of debt and equity (investor-supplied capital) and consists of numerous elements, including utility plant in service, utility plant held for future use, certain elements of construction work in progress (completed and in service), certain unclassified plant in service, and certain working capital components. The gross rate base generated by adding these elements together is then adjusted by accumulated depreciation; depletion and amortization; contributions in aid of construction; customer advances for construction; and deferred federal and state income taxes, among other things. After all necessary elements are added to or subtracted from rate base, the net rate base represents the amount of utility plant and other capitalized items to which the overall rate of return authorized by a utility commission will be applied to generate the return component to be included in utility rates. This return component will include allowance for interest costs, dividends on preferred stock, and a return on equity. Generally, for utility plant to be included in rate base, it must be (i) used (i.e. in service) and (ii) useful (i.e., used by the utility in providing service to its customers).

Under the Commission's *Tariff Rules* the Commission requires utility rate filings and Rule 42 Financial Exhibits to utilize an historic average of rate base components as of the beginning of a test year and as of the end of each month of a test year (thirteen-month average). In some instances, allowing a plant addition during a test year to be fully reflected

in rate base as though it had been in service for the entire test year has been considered and allowed by the Commission. This treatment is the equivalent of allowing a rate base item at its value as of the end of the test year, without averaging, and is sometimes referred to as "terminal treatment" of such item to determine rate base.

The Commission *Tariff Rules* permit utilities to argue for other than the thirteen-month average by providing additional information, but generally, adjustments to the thirteen month average rate base are viewed somewhat skeptically unless the utility can demonstrate the adjustments relate to non-revenue producing and non-expense reducing plant. *See, e.g.*, *West Virginia-American Water Company*, Case No. 94-0138-W-42T (Commission Order, December 22, 1994) ("1994 Rate Case"), and *West Virginia-American Water Company*, Case Nos. 92-0113-W-PC and 92-0250-W-42T (Commission Order, May 19, 1992) at p. 2 and at Conclusion of Law No. 3 at p. 4. The Commission limited the application of this treatment stating that "[a] mere budgeted item is not sufficient to meet the Commission's known and measurable test." 1994 Rate Case Order at Conclusion of Law No. 6 at p. 67 (citation omitted).

In the 2003 Rate Case Order the Commission reiterated the 1994 Rate Case Order:

> The Commission has traditionally regulated utilities using a 13 month average test year rate base. The CAD in this case argues that the Commission should use its traditional 13 month average for rate base. Staff allowed terminal rate base treatment only on certain rate base which it viewed as non-revenue producing, non-expense reducing additions, including those budgeted for 1995. The Company requested year end or terminal rate base treatment for its entire rate base. In the last several years West Virginia Water stipulated cases, the Company was afforded the Staff calculation of rate base, which allowed terminal treatment for non-revenue producing, non-expense reducing additions to plant, including those budgeted for the future. The Commission does not view the stipulated cases as having any precedential value. The mere fact that the Commission approves a stipulation does not indicate Commission approval of a particular rate treatment for rate base. The Commission has no problem with allowing appropriate going level adjustments from test year rate base when they are known and do not violate the matching principle. However, the line between 'known and measurable' and 'reasonably expected' is difficult to draw. Staff and the Company suggest a very broad line and CAD suggests a fine line. The Commission is prepared to allow the Staff methodology, in this case, only because the stipulated agreements permitted it in prior cases. However, we put the Company on notice that such treatment will not be granted in its next rate case unless the Company can demonstrate the need, prudence, and reasonable certainty of construction expenditures. Furthermore, the non-revenue test must be met for any projects not afforded the special treatment for investments in ill-served areas. The current record does not justify the Commission abandoning its traditional ratemaking philosophy

regarding year end rate base.

The Commission is concerned with the difficulties that the Company apparently suffers in actually achieving its rate of return as authorized by the Commission. The Commission is also sensitive to the fact that the Company is having an ever increasing rate base needed to service its customers but has a very slow increase in sales. The Commission is also sensitive to the large unmet water needs in West Virginia, in which the Company may be a key player in providing service. We are, therefore, willing to consider alternative treatments to rate base in the future. One possibility that the parties should review and examine in the next rate case is a possibility of a special experimental allowance for West Virginia American Water Company of an Allowance For Funds After Construction ("AFFAC"). A possible AFFAC adjustment might allow the Company to accrue the dollars spent after construction of non-revenue producing, non-expense reducing plant that could be recovered in later rate cases. The Commission is willing to consider an AFFAC mechanism but only on the plant that is truly non-revenue producing non-expense reducing. The Commission is concerned that the Company or other advocates of special rate treatment actually prove that any qualifying rate base be actually non-revenue producing, non-expense reducing. The Commission is willing to consider other experimental innovative ratemaking treatments to address the special problems West Virginia Water has regarding its rate base.

Another issue in this case revolves around West Virginia Water's participation in certain projects to better serve ill-served areas. In this case, there were Kanawha County projects, as well as a Winifrede/Decota project, for which the Staff advocated special rate base treatment. Even though these projects produced revenue, the Staff allowed special treatment to include these projects as terminal rate base for the portion exceeding three and one half time annual revenue (excess investment). We will approve of this special innovative treatment for the Company for these projects in this case. We will also consider similar treatment for other ill-served or under served areas in the future. However, we view this an experimental innovative ratemaking treatment for West Virginia Water Company due to its unique situation. In the future, any such special treatment must be requested as part of the certificate of the project in order to later qualify for the excess investment terminal rate base treatment in later rate cases. Again, the Commission is not attempting to depart from its traditional ratemaking philosophies for all utilities, but merely for West Virginia Water as an experimental innovative response to what the Commission perceives to be special difficulties for the Company.

2003 Rate Case Order at pp. 55-58.

*Positions of the Parties on Terminal Treatment*

In this case the parties agreed with the theoretical framework as to those instances in which the Commission should grant extraordinary rate treatment; they disagreed, however, as to whether the Company had met the burden of proof about whether those adjustments to the historical test year rate base should be allowed in this case.

The Company used year-end treatment for additions that it considered non-revenue producing/non-expense reducing and made going-level adjustments to increase rate base to reflect such year-end (terminal) treatment. Both CAD and Staff disagreed with the Company terminal treatment approach to calculating the going-level plant in service and other rate base components for 2007.

Staff witness Kellmeyer asserted that the Company (i) had not proven that the test year additions are non-revenue producing/non-expense reducing and (ii) had only made assertions to that effect in support of the Company $5,245,656 adjustment to rate base. Staff Ex. No. DLK-D at p. 14. Staff recommended the Commission reject all year-end treatment. Staff Ex. No. DLK-D at pp. 12-14; Tr. V at pp. 48-50. Ms. Kellmeyer agreed, however, that it would not be reasonable to require the Company to conduct a cost benefit analysis to demonstrate that each of the individual investments was not revenue producing or expense reducing, but did not have a specific recommendation on what how to proceed. Tr. V at pp. 50-56.

During questioning by the Commission regarding what type of plant is eligible for terminal or year-end or post test year treatment, Ms. Kellmeyer provided a few general examples, conceded that Staff had not developed a rule of thumb but indicated that some substantial amount was necessary to trigger special rate treatment. Ms. Kellmeyer did acknowledge that the Company's filings in this case on this issue were similar to the Company's filings in past cases. She did not believe, however, that this was the first time Staff has argued that the Company had not shown that rate base for which the Company was requesting special treatment is non-expense reducing. She was also not aware of the Company supplying less supporting data in this filing than in prior cases in which she has participated. Tr. V at pp. 125-128.

CAD witness Ms. Crane recommended that the Commission strictly adhere to the average utility plant-in-service balances for all accounts, instead of the terminal values proposed by the Company. Ms. Crane stated that Rule 42 requires rate base to be developed based on thirteen-month average balances over the test year, properly matching test year investment to revenues and expenses during the same 12-month period. While the Commission has permitted known and measurable adjustments to the average rate base, the Commission has required such adjustments to be (i) known and measurable, (ii) non-revenue producing, non-expense reducing, and (iii) not violate the matching principle. Additionally, the Commission has required the utility to demonstrate the need, prudence, and reasonable certainty of construction expenditures, for such adjustments. CAD Ex. No. 2 at p. 11. Ms.

Crane asserted the Company has not justified deviating from Tariff Rule 42 in this case as the Company has not provided any testimony regarding the specific projects for which it is seeking terminal rate base value nor has it demonstrated that the projects conform to the Commission criteria. Ms. Crane's adjustment decreases going-level utility plant-in-service by $5,753,707. CAD Ex. No. 2 at pp. 10-12 .

Company witness Miller argued that the Company had accounted for investment the same as it has in past Company rate filings. Company Ex. No. MAM-R at p. 59. In response to CAD witness Crane's and Staff witness Kellmeyer's arguments, Mr. Miller stated, "Ms. Crane and Ms. Kellmeyer must appreciate that the utility plant in question falls within the mass property accounts, and represents run of the mill, everyday replacements of mains, services, hydrants, pumps, motors, and similar facilities. That is why, when responding to CAD data requests seeking an explanation for how the Company determined that this investment was non-revenue producing/non-expense reducing, the Company provided workpapers showing individual work orders for hundreds of separate investments, explaining (as Ms. Kellmeyer concedes in her testimony) that the 'non-revenue' projects are 'normal recurring construction and replacements.'" Company Ex. No. MAM-R at pp. 59-60. Mr. Miller indicted it would be an unreasonable requirement for the Company to conduct specific cost-benefits analysis as recommended by Ms. Kellmeyer to obtain terminal treatment of its investments in these accounts. Company Ex. MAM-R at pp. 59-60.

During questioning by the Commission on the Company's calculation of non-revenue producing additions, Company witness Ware stated that he worked with Company engineers to review hundreds of work orders to determine whether projects were revenue producing and non-expense reducing. Tr. IV at pp. 160-162; and pp. A-94 through A-124 of the Company workpapers. Upon cross-examination by CAD, Mr. Ware explained that he looks to see if a project is an acquisition because if it is, then its revenue producing. If he was looking at work papers associated with a tank, he would go to the Company engineers to see if the project is non-revenue producing, non-expense reducing. Mr. Ware testified that he relies on a Company engineer to review the work orders and acknowledged that he was not aware of whether the engineer had a particular set of criteria or checklist to use to determine whether an item fits within the non-revenue producing category. Tr. IV at pp. 168-175.

***Commission Discussion and Decision on Terminal Treatment***

What began as special ratemaking treatment designed to address particular difficulties faced by the Company or to encourage the Company to extend service to unserved or underserved areas has become, over the years, a point of unending controversy and expense as the parties have tried to identify what qualifies for terminal treatment. Staff witness Kellmeyer brought focus to the problem when she pointed out that Staff does not have a rule of thumb for determining when non-revenue producing/non-expense reducing terminal treatment should apply. For that lack of direction the Commission will take responsibility and, moreover, will herein attempt to calm the waters somewhat on this issue.

This Commission concludes that the volume of transmission and distribution plant mains, services, meters and hydrants ("T&D delivery plant ") operated by the Company, the age of that plant, and the necessity to replace aging T&D delivery plant regardless of customer growth, or lack thereof, is a major problem for the Company if it must face a lag of two rate cases before the full revenue requirement of such plant replacement is reflected in rates. We also believe that this is the same concern addressed by the Commission in the past when authorizing year-end rate base treatment of non-revenue producing/non-expense reducing additions made during a test year. In theory, replacement of T&D delivery plant may have some beneficial, but difficult to identify, expense-reducing potential in the form of reduced maintenance expense. The Commission does not believe, however, that the potential, and anything but certain, reduction in maintenance expense that might result from replacement of T&D delivery plant is a good reason for not allowing year-end treatment of test year additions to these specific plant accounts. Therefore, the Commission concludes that replacement of existing T&D delivery plant that is not associated with significant customer or usage growth meets the criteria for year-end rate base treatment.

With regard to other plant additions during the test year, it is not so clear that even if they are replacement of existing plant they would not result in reduced expenses. With plant other than T&D delivery plant, it is more reasonable to question whether there may be reduced maintenance expenses or improvements in efficiency and productivity that would reduce expenses and to require more by way of proof than the fact that the expenditures were made. The Commission concludes that test year additions and replacements to accounts other than mains, services, meters, and hydrants should be held to a higher standard of proof and should require some analysis explaining that these additions and replacements are not revenue producing and would have not more than minimally reduced test year expenses if the additions had been in service for the entire year. Although we understand that virtually all of this plant has some *de mininis* revenues producing/expense reducing potential, we hope the utility and the other parties will examine this in a meaningful way. We expect more than conclusory statements, and we remind the Company that it has the burden of proof in that regard.

The Company initially identified $14,900,196 in non-revenue producing test year additions. Because a portion of these additions was included in the average test year plant balances, the Company further identified that an adjustment of $10,237,945 to average test year plant was necessary to reflect the full allowance of these additions in rate base. Company Ex. 3, (Rate Base Workpapers - "A" at p. 78 of 129).

The Company subsequently determined that this adjustment was in error and it modified its adjustment to $5,753,707. A significant portion of these additions, and a significant portion of the Company calculated "year-end treatment" adjustment, related to plant additions other than T&D delivery plant. The portion of the Company's adjustment to reflect year-end rate base treatment of mains, meters, services and hydrants was $4,051,342. Company Exhibit 3, (Rate Base - A at p. 78 of 129), and JLW-R at p. 16, (referencing CAD data request 3-B-13). We determine that this portion of the Company adjustment should be

allowed without further analysis or support by the Company as to the non-expense reducing nature of these additions. However, the balance of the Company adjustment includes plant additions for items such as pump station structures, booster pumps, electrical panels, treatment plant structures, treatment plant chemical feed equipment, computer equipment, transportation equipment, tools and other work equipment, and telemetry and other communication equipment. Without additional credible evidence, this listing of plant additions that do not fall within the T&D delivery plant categories are not obviously non-expense reducing, and year-end treatment of these plant additions would not be reasonable absent a more detailed showing by the Company that they would not have resulted in more than minimal expense reductions during the test year if they had been in place for the entire test year.

For the reasons discussed above, the Commission concludes that (i) an adjustment to the Company average test year rate base in the amount of $4,051,342 to reflect year-end treatment of T&D delivery plant is reasonable, and (ii) any other plant additions during the test year have not been addressed by the Company and shown to be non-expense reducing and will not be allowed as a rate base adjustment in this case.

As noted elsewhere in this order, the Company should redouble its efforts to find internal means of bettering its bottom-line instead of relying on increased revenue to solve its problems. To that end, the Commission also notes that the Company may not be taking advantage of the tools it has available to it. For example, the Company could explore the uses of AFDC. The Company has (or had) a policy for when and whether it will seek AFDC and does not seek AFDC on all plant. *See, e.g., West Virginia Water Company*, Case No. 80-274-W-42T (Hearing Examine Decision, April 28, 1981). At a time when that plant had to be tracked and accounted for in a less sophisticated manner, it might have made sense to have a *de mininis* approach to AFDC. The Commission is not sure what the Company's current policy is, but with the pervasiveness of computers and their electronic "power," the Company may want to examine that policy to see if it still is not cost effective to track smaller or shorter term capital addition work orders for AFDC purposes. Likewise, in the 1994 Rate Case the Commission invited the Company to explore the use of an AFFAC. The Commission again issues that invitation.

**Post-Test Year Investment**

Another contested issue in this proceeding is what steps the Commission should take to foster a reduction in the Company unaccounted for water ("UFW").

In this case and during the course of the WVAWC 2007 Rate Case, the CAD expressed concern over the Company UFW levels. In fact, the CAD suggested in the 2007 Rate Case that the Commission eliminate certain production costs based on a lower level of UFW than that actually experienced by the Company. Company Ex. MAM-R at 88-89; Company Ex WDM-R at 16-17. The CAD recommended a similar adjustment in this proceeding. CAD Ex. 2 at pp. 48-49.

In resolving the 2007 Rate Case, the Commission did not implement this CAD recommendation, but the parties agreed in the Amended Joint Stipulation and Agreement for Settlement filed January 7, 2008 ("2007 Amended Joint Stipulation") that the Company would engage an independent consultant to study and submit a written report to include recommendations for a comprehensive plan to reduce the Company's UFW. WVAWC 2007 Order at Attachment A (2007 Amended Joint Stipulation at p. 6). In March 2008, the Commission approved the 2007 Amended Joint Stipulation. The Company collaborated with the Staff and the CAD to devise the scope and approach for the study and to identify the independent consultant to conduct it. This collaboration resulted in the selection of Earth Tech, Inc. ("Earth Tech"), to conduct the study. In May 2008, Earth Tech provided the Water Loss Study ("Water Loss Study") to the Company. Following a presentation to Staff and CAD representatives, the Company filed copies of the Water Loss Study with the Commission in the 2007 Rate Case. Company Ex. WDM-D at 16.

Although the Water Loss Study was filed in the 2007 Rate Case, it was presented and sponsored in this case. The Water Loss Study concluded that the Company is experiencing a high and increasing incidence of water main failures and water loss due to high leakage. Water Loss Study Executive Summary at p. 14; Company Ex. RH-D at pp. 2, 4. Mr. Hope testified that, from the level of breaks and leaks occurring in the system and the increasing trend in breaks and leaks, a significant portion of Company water mains appear to be reaching the end of their useful life. Company Ex. RH-D at p.4. The Water Loss Study concluded that an increase in investment in water main replacement and rehabilitation is required and that "if the Company took a more proactive approach to water main replacement and active leakage control, the number of water main breaks and the volume of water lost due to leakage would decrease." Company Ex. RH-D at pp. 2, 4 (*citing* Water Loss Study).

In support of his conclusion, Mr. Hope testified that the Company had been replacing on average only 0.26% of the total length of its water mains each year over the past five years. Mr. Hope stated that typical industry guidelines call for annual replacement of 1.0% of the total length of the water mains. The Water Loss Study recommended that the annual water main replacement rate over the next years for the Company be between 1.0% and 2.3% of the Company's total water mains, with priority given to replacing the small diameter water mains. Water Loss Study Executive Summary at 16, 18. Mr. Hope concluded: "The investment and the replacement of water mains is critical in ensuring that customer service is maintained and that the water system is sustainable." Tr. IV at pp. 60-61 (Hope). The Water Loss Study specifically recommended that the Company begin replacing 1.5% of its mains, which would cost approximately $10.6 million per year. Water Loss Study Executive Summary at p. 18.

In addition to main replacement, the Water Loss Study recommended expanded leak detection, district metering and certain plant replacement in addition to main replacement.

The Company requested that the Commission recognize $4 million in post-test year rate base to permit the Company to increase its small main replacement investment in an

attempt to implement one of the primary recommendations of the Water Loss Study. This amount would be in addition to the funds already dedicated by the Company to main and service line replacements annually. Company Ex. WDM-R at p. 7. Both the Staff and the CAD recommended the Commission reject this adjustment to the Company rate base.

The CAD stated that the Commission should include the cost of investments in rate base only when they are used and useful for serving customers. CAD Ex. 2 at p. 14. Indeed, CAD witness Crane testified that managing NRW levels is a "normal, ongoing and integral component of running a water utility and therefore such costs should not be given extraordinary rate base treatment." CAD Ex. 2 at p. 14. The CAD also argued that increased investment in infrastructure replacement is not a cost-effective method of reducing UFW, and recommended that the Commission disallow this adjustment. CAD Ex. 4 at p. 10. Staff also rejected the adjustment, testifying that this future investment is expected to be expense reducing and should therefore not be afforded post-test year treatment. Staff Ex. DLK-D at pp. 14, 16.

***Commission Discussion and Decision on Post-Test Year Investment***

As observed in our introductory comments earlier, this is a complex issue and is further complicated by the fact that large portions of the Company's transmission and distribution system are relatively new while some of the older systems acquired in mergers and acquisitions are seriously "dated." The Water Company is an odd mix of water mains. It has, through some of its public/private partnerships and other acquisitions installed countless miles of new main, much of which should be expected to provide reliable service, with little need for replacement for some time. On the other hand, as a part of its public/private partnership, or as a part of its growth by acquisition, it has also acquired any number of small, troubled systems that require significant improvement and upgrade, as do some of its older systems in Charleston, Huntington, Oak Hill, Princeton, Bluefield and other areas. While the Water Loss Study made no differentiations for the curious mix of the system, the Commission believes that the Company has demonstrated a need for a more concerted effort in replacement of mains and services. The Commission is not convinced, however, that it is reasonable to allow a $4 million rate base adjustment in this case in anticipation of future incremental investment. The Commission does not totally embrace the Staff and CAD position that the Company should be required to recover for this type of ongoing investment only through the normal course of a rate case after the lines are placed into service. Even though our decision with regard to year-end rate base treatment of investments in T&D delivery plant would reduce some of the lag in recovery of that incremental new investment, there would still be some period of time after the in-service date of that investment before the Company could be recovering a return and depreciation thereon. Instead, the Commission believes that it is reasonable to consider the implementation of a periodic surcharge to reflect more timely the incremental investment in replacement of mains in rates as compared to prior years. That approach might, to some small extent, help to alleviate the "need" for annual rate relief that has become the hallmark of WVAWC. In the alternative, the Commission may consider a plan to allow an accounting

mechanism to allow the Company to accrue an allowance for funds used for those increased line replacements until such time as their cost is reflected in rates. Either a surcharge or accounting allowance would have to include a standard for identifying increased plant investment in excess of some base amount and a mechanism for implementing periodic surcharge adjustments or quantifying an appropriate allowance for funds expended on such replacements.

Given the lack of record on these items, the Commission will not establish a procedure as described above for a $4 million rate base adjustment nor will the Commission in this case make an adjustment to reduce expenses to reflect a lower level of UFW. The Commission looks for improvement in this number and urges the Company to redouble its efforts to control UFW. The Company should discuss with Staff and CAD the pros and cons of a surcharge or accounting approach that could be the subject of a separate filing by the Company. The Commission will consider a filing by the Company to be an allowable extension of this decision and would consider the implementation of a surcharge or accounting procedure in a separate proceeding without waiting for a future full rate case before implementing such a procedure. Whether the parties come to full agreement, partial agreement or no agreement at all, the Commission will not indicate in advance that it will approve a filing, but it will fully consider and rule on a mechanism to protect the Company against an erosion of earnings for identifiable, quantifiable and verifiable incremental investment in main replacement as described in the Water Loss Study.

**Working Capital Allowance (Lead/Lag)**

Working cash is the capital contributed by investors that must be used to pay for expenses of a company before revenues to pay for those expenses are received from customers. Working Capital is included in rate base to provide investors with a return on this capital investment. 2003 Rate Case Order at p. 103. Depending on timing of cash receipts and expense payments, it may not be necessary for investors to provide much or any cash working capital. If a utility receives revenue for providing service to customers before expenses associated with those services must be paid, it may, in fact, have a negative cash working capital. On the other hand, when a utility must pay expenses prior to collecting the associated revenues, the result is a positive cash working capital requirement. 2003 Rate Case Order at p. 103. A lead/lag study measures the differences between the time services are rendered until the time revenues for those services are received and the time when payment is rendered by the utility for related expenses.

In this case, the Company continues to use the results of a 2002 lead/lag study. The revenue lag from that study was 45.23 days reflecting a service median of 14.54 days, a billing lag of 1.5 days, and a payment lag of 29.19 days. The payment lag represents the average period of time after bills are rendered before the Company receives payment from customers. This lag represents a weighted average of customer payment lags. Thus, if half of the Company billings are paid in 10 days after bills are rendered and half are paid in 50 days, the average payment lag would be 30 days. The 2002 study for service median and

billing lag was not challenged by any party; however, the Staff and CAD questioned the use of the 29.19 day payment lag.

Both the Staff and the CAD reduced the lag for payment days from 29.19 days to 20 days. This resulted in a reduction of the overall revenue lag to 36.04 days. CAD Ex. 2 at pp. 16-17; Staff Ex. DKH-SD at p. 14. The Staff and CAD objection to the continued use of the 2002 lead/lag study results for determining payment lag was based on Commission approval in the 2003 Rate Case Order of a 10% late payment penalty. This penalty provision in the Company tariff allows it to charge customers an additional 10% if bills are not paid within 20 days from the issuance of the bill. The Staff and the CAD asserted that there is no need to include any cash working capital for revenue lag associated with payments for the Company beyond 20 days. The CAD and the Staff recommended the Commission use a revenue lag of 20 days, reducing the Company calculated cash working capital requirement by $3.25 million.

The Company stated that (i) the revenues from the late payment penalties are already embedded in rates and have been since the 2003 Rate Case, (Company Ex. MAM-R at p. 71), (ii) the late fee is the collection of additional revenue from customers who do not pay timely, (iii) the benefit of this revenue is passed on to all customers in the form of lower tariff rates than would otherwise be required, (Company Ex. MAM-R at p. 71; Tr. I at p. 96 (Miller)), and (iv) the Company does not earn in relation to the late payment fee, but is only allowed to earn on its rate base investment that is currently recognized in rates. Tr. I at pp. 94-95 (Miller).

***Commission Discussion and Decision on Working Capital Allowance (Lead/Lag)***

The Commission does not accept the CAD and Staff arguments that the delayed payment penalty is the mechanism to compensate the Company for the carrying cost of customers that take more than 20 days to pay their bills. The Commission includes the revenue from the penalties in overall revenue and in doing so credits the cost of service for all customers by the revenue received from the delinquent customers. The Company receives no additional revenues or profits because of the delayed payment penalty (Company Exs. MAM-R at p. 71, Tr. I at pp. 94-96), although the penalty may have some impact on the rate of uncollectibles or the revenue lag of the Company. The Commission is aware that lead/lag studies are costly and time consuming to prepare, but the Commission is concerned with the age of the lead/lag study and the fact that subsequent to that study there has been significant change in the impact on customers that delay paying their bills. When the study was originally performed, there was no penalty for customers who extended payments beyond twenty days after bills were issued. The only inducement for customers to pay their bills more timely were (i) credit reporting considerations, (ii) Company collection activities, and (iii) the eventual threat of service termination. While all of those inducements were components of a 29-day payment lag in 2002, the imposition of a 10% penalty after 2003 was an additional factor that should be a strong additional inducement for customers pay bills more timely. It is likely that there has been some pressure on customers to reduce their

payment lags since the lead/lag study was performed in 2002.

Although the Commission believes that there was some effect of the imposition of delayed payment penalty provisions since the lead/lag study was performed, the Commission does not find any evidence to support an assumption that bills are now being paid in twenty days. Whether the actual payment lag is now twenty days, or something less or more, requires a new study of revenue lags. The Commission does not normally approve of single item modifications to something as complex and containing interdependent variables as a lead/lag study. However, under the circumstances the Commission cannot accept that the revenue payment lag was not reduced by the approval of the 10% delayed payment penalty. Furthermore, the revenue payment lag is not a difficult or time consuming part of a lead lag study because all of the information necessary to ascertain that lag comes directly from the Company accounts receivable records. Therefore, the Commission will place the parties on notice that if the Staff or CAD propose a modification to the revenue lag days based on a payment lag analysis of the Company billing and accounts receivable records in the next rate case, the Commission will accept that modification without requiring a full-blown lead/lag study be conducted. This decision does not preclude the Company from performing a new lead/lag study to be filed in its next rate case.

**AWWSC Adjustment to Cash Working Capital**

The CAD recommended an additional adjustment to the Company cash working capital claim for the Company payments to American Water Works Service Company ("AWWSC"). CAD Ex. 2 at pp. 18-19. According to CAD witness Crane, the Company should not be required to pay for these services any more rapidly than it would pay for the services if they were performed internally. *Id.* Thus, Ms. Crane adjusted the cash working capital associated with payments to the AWWSC by assuming the same 12 day expense lag associated with the Company direct labor costs, suggesting that the Company should pay AWWSC no earlier than it pays its employees. The effect of this adjustment is to further reduce the Company cash working capital by approximately $312,000.

In response, the Company stated that its payments to AWWSC are governed by an Agreement authorized by the Commission. *See, West Virginia-American Water Company*, Case No. 88-595-W-PC (Commission Orders, October 20, 1988 and September 27, 1989). The Company stated that the contract between it and AWWSC provides that: "As soon as practicable after the last day of each month, the AWWSC shall render a bill to Water Company for all amounts due from Water Company for services and expenses for such month plus an amount equal to the estimated cost of such services and expenses for the current month." Company Ex. MAM-R at p. 73.

The Commission is not persuaded that the CAD recommendation is unreasonable or requires actions on the part of the Company that violate its agreement with AWWSC. The agreement allows AWWSC to provide a current bill "as soon as practicable" after the last day of each month. It also provides that AWWSC provide an estimate of the bill for the next

month. However, there is no provision for advance payment of the next monthly bill. While WVAWC should not act unreasonably in making payments to AWWSC, a lag comparable with its own payroll lags does not appear to be unreasonable, while an advance payment does appear to be unreasonable. The Commission will adopt this additional CAD adjustment to the Cash Working Capital.

**Rate Base Reduction for OPEBs**

Staff made two major OPEB related adjustment to rate base. The first adjustment reduced rate base by $888,622. Staff stated that the Company normally funds less for OPEBs than the amount included for recovery in customer rates. The rate making portion of this liability represents ratepayer supplied capital and should be treated as a rate base reduction. Staff DKH-SD at p. 11. Staff Ex. No. DKH-SD at pp. 11-12.

The second OPEB related adjustment that Staff made reduced plant in service by $768,892. Staff witness Hatten explained that in *West Virginia-American Water Company*, Case No. 95-0228-W-42T, the parties entered into a stipulation that did not allow the Company full rate recovery for the OPEB expense. Instead, a forty-year schedule of adjustments that included both increments and decrements to annual FASB 106 cost was used. That treatment has been followed in subsequent cases. From 1996 to 2007 these decrements to full FASB 106 expense caused the Company to capitalize higher amounts related to payroll than that allowed for rate making purposes. Staff DKH-SD at p. 12. Staff reduced the resulting overcapitalizing from the plant in service for each of the years that the schedule of OPEB adjustments has been in effect. Staff Ex. No. DKH-SD at pp. 12-13.

Company witness Miller disagreed with the Staff reduction of rate base by $889,662. Mr. Miller attached Ex. MAM-19, a history of the OPEB expense under U.S. GAAP ("FAS 106 costs"), to show that the Company funded FAS 106 cost at $4.001 million more than recovered in rates. The only year the Company did not fully fund FAS 106 costs was in 1993. The Company also disagreed with Mr. Hatten's proposal to eliminate an additional $768,892 of rate base stating that the Company had over-capitalized its OPEB expense.

During cross-examination by the Company, Mr. Hatten stated that he did not have a reason to dispute Company witness Miller's exhibit that the Company funded FAS 106 costs above the amounts Mr. Hatten indicated in his testimony. Tr. IV at pp. 254-255.

The Commission will not adopt the Staff proposed $889,662 rate base reduction. Although Mr. Hatten originally calculated an under-funding of OPEBs related to amounts allowed for rate making purposes, he stated that he did not dispute Mr. Miller's exhibit showing that the Company had funded its OPEB liabilities to a greater extent than amounts allowed in rates. The Commission agrees with the second Staff adjustment related to capitalization of payroll and payroll related costs. The Commission allowances for OPEBs are different from the allowances calculated under FAS 106, and the amounts capitalized by the Company should reflect the Commission authorized OPEB allowances. Staff has

determined that the Company has booked different amounts from the Commission authorized OPEB allowances and those amounts should not be reflected for rate making purposes. The Company should match its plant accounting for ratemaking purposes with the Commission ratemaking treatment of OPEBs.

**Materials and Supplies, Prepayments and Accumulated Deferred Investment Tax Credit and Other Deferred Debits**

The Company made adjustments to its average balances in Materials and Supplies, Prepayments, Accumulated Deferred Income Taxes, and Other Deferred Debits to reflect the year-end value of these items in rate base. Staff objected to these adjustments on the basis that they depart from the average test year without any attempt to justify such a departure.

These adjustments fall into the category of "unexplained" adjustments proposed by the Company. "Unexplained" because the Commission does not know whether somewhere in the hundreds of pages of workpapers or responses to data requests there may be some explanation of the adjustments. The adjustments appear in the Company rate base schedule without any reference to any adjustment number that explains the adjustment. The supporting schedules for these rate base components offer no more explanation of the justification of these adjustments. Those supporting schedules merely show the average test year balance and the year-end balance for these items. The Commission is left to its own imagination in reviewing the Rule 42 to determine what facts, if any, might support the need to use a year-end balance in rate base.

There may be valid reasons for departing from an average test year balance in any of these rate base components. The balances may be unusually high during the test year and declining over time. Even given those facts, it may not be appropriate to depart from an average test year balance for rate base purposes. Some or all of prepayments may be picked up in a lead/lag study and would be duplicated in rate base without some modification to a simple use of average test year balances. Deferred taxes may be growing because of significant test year plant additions at the same time that we are allowing year-end rate base treatment for those plant additions. This may justify departing from a historic average balance of accumulated deferred taxes. However, without some indication from a party, most properly the party proposing the adjustment, the Commission has a great deal of difficulty divining the justification for the adjustment.

Materials and Supplies started 2007 at $1.3 million and ended 2007 at $1.4 million. The average monthly balance reported by the Company in its Rule 42 exhibit equaled $1.7 million. Company Ex. 2-R (Revised Rule 42) Statement B at p. 14, and Schedule 5. The Company proposed to reduce the average to the year-end-2007 level, an adjustment that reduces rate base by approximately $300,000. The Commission does not see anything particularly unusual in these data. Materials and Supplies may well cycle upward to the beginning of a construction season and then fall to levels close to the beginning-of-the-year level during a construction season. That would result in average monthly balances during

the test year being higher than the ending balance. This is not troubling and would not, in and of itself, suggest adjusting Materials and Supplies inventory balances to year-end levels. Except for the fact that this adjustment reduces rate base, we see no purpose for the adjustment.

Prepayments presents a more interesting set of data. Prepayments were $2.8 million at the beginning of 2007 and reduced to $850,000 at the end of the year. Company Ex. 2-R (Revised Rule 42) at Statement F. The average monthly balance for the year was $803,000. The Company proposes to adjust the average to the year-end level, a reduction in this rate base component of $533,000. In this data, the Commission sees a downward trend. The Commission has no indication that this trend is influenced by an unusual level of prepayments that will not be repeated, nor is there any indication that some portion of the high prepayment balance during the year was duplicated in the Company lead/lag study calculation of cash working capital. Either of these possibilities, if they were fact, could justify departing from the average monthly balance of prepayments for purposes of developing the rate base in this case. Unfortunately, we do not have the requisite facts to determine why this adjustment is necessary or reasonable.

Based on the comparative balance sheet included in the Company Rule 42 Exhibit, deferred income taxes, in total, declined from approximately $82 million at the beginning of 2007 to $81 million at the end of 2007. Company Ex. 2-R (Revised Rule 42) at Statement F. This "high level" of detail gives the Commission little information with which to understand the Company rationale for moving to a year-end balance. Total deferred income taxes include differences between book and tax depreciation effects prior to the time that the Commission began normalizing such timing differences. The deferred taxes associated with timing differences that we flowed-through to customers are offset by regulatory assets and are not available for rate base reductions. The Rule 42 detail schedule for deferred income taxes indicates that the average balance associated with timing differences normalized for ratemaking purposes averaged $35.3 million during the test year and the year-end balance was $35.7. Adjusting the test year monthly average to the year-end level increases the deferred taxes, which in turn reduce rate base, by $400,000, thereby reducing rate base by that amount. There may be some basis for departing from the test year average on this item. Because the Commission is allowing year-end treatment of certain water delivery capital additions, there may be higher deferred income taxes associated with these additions on a year-end basis. However, the Commission is unable to discern if that is true for the plant additions that we are including in rate base on a year-end basis. If the Company had reflected this adjustment in Schedule G, with at least some explanation (other than merely "to adjust to year-end level"), the Commission might have had a better idea what the Company was proposing in this adjustment and why.

Although these adjustments reduce rate base by approximately $1.3 million in aggregate, the Staff opposed the adjustments and the Company supported the adjustments. The Commission will reluctantly accept the adjustments for Materials and Supplies, Prepayments, Deferred Income Taxes, and other Deferred Debts, although we do so with

reservations and without any clear indication of why the Company thinks these adjustments are proper. The Commission concludes that there is not sufficient analysis or detail provided by either the Staff or the Company with respect to these adjustments. Under these circumstances, however, the Commission is not inclined to make the ratepayers suffer for the quality of the proof. Because it is necessary to adopt one or the other, the Commission will adopt the number that results in the lower cost of service. The Commission does not expect to see arguments in future cases that other departures from average test year ratemaking should be allowed because of the Commission acceptance of these unexplained adjustments.

The Commission notes that there are similar unexplained adjustments from the average test year balances for Deferred Investment Tax Credits and Other Deferred Debits, and for which there appears to be a lack of any explanation of the adjustments in the Company Rule 42. The Commission notes this and will not further independently evaluate these accounts. The adjustment values proposed by the Company will be included in the Commission approved rate base. Again, the Commission does not expect to see arguments in future cases that other departures from average test year ratemaking should be allowed because of the Commission acceptance of these unexplained adjustments.

**Contribution in Aid of Construction / Acquisition Adjustment**

The Staff identified negative acquisition adjustments in the amount of $450,804 that were not reflected as a credit to rate base on the books and that the Company had not proposed as an adjustment to reduce rate base. Staff Ex. No. DLK-D at p. 16. The Staff treatment of negative acquisition adjustments as rate base reductions was approved by the Commission in the 2003 Rate Case. Staff Ex. No. DLK-D at p. 16. The Commission will adopt the Staff adjustment and treat the negative Acquisition Adjustment as a Contribution in Aid of Construction.

**Depreciation Expense**

The differences in Depreciation Expense identified by the parties in their respective testimony relate to the level of plant that the Commission decides to include in rate base. The Company proposes to provide for a full year of depreciation on plant additions that the Commission determines to adjust to year-end levels.

The Commission will adjust the test year Depreciation Expense allowed in this case to reflect the depreciable plant adjustments allowed elsewhere in this order. For purposes of this adjustment, the Commission shall use the weighted average depreciation rate of 2.7% reflected in the Company's revised Rule 42 exhibit.

**Account 391 – Thirteen Month Average Balance**

Ms. Crane made an adjustment of $27,549 based on an error the Company made in the calculation of its thirteen-month average balance for account 391. CAD Ex. 2, Schedule

ACC-7. In response, the Company agreed that its Revised Rule 42 overstated its average monthly balance by $27,549. Company Ex. JLW-R at p. 16. We will adopt the CAD adjustment.

## OPERATION AND MAINTENANCE AND OTHER EXPENSES

### Chemical Costs

The Company calculated its going level chemical expense by obtaining the actual amount of each chemical used during the test year and then re-pricing those volumes at the most current chemical prices available. In the Original Rule 42, the prices were those used by the Company in 2008. In the Revised Rule 42, however, the Company adjusted chemical expenses based on the results of the most recent procurement process for 2009 chemical prices. AWWC conducted this procurement process in July 2008. The 2009 prices were higher than the 2008 contract prices used by the Company in its original filing. Using the new prices resulted in an expense increase of $1,181,106 over the original filing. The Company stated that chemical costs were adjusted to reflect reduced sales as a result of the continued decline in the average consumption per residential customer as well as the anticipated savings cause by decreased water loss that will likely result from increased main replacement. Company Ex. JLW-D at p. 11. The Company considered the addenda or modifications to be part of the Agreement when signed by the vendor. Tr. IV at p. 157 (Ware).

Although the CAD accepted the revised pricing obtained through the most recent procurement process, the Staff recommended that the Commission use the 2008 pricing to determine chemical expenses. Staff stated that (i) although the Company had received bids for its chemical costs in 2009, those bids were estimates, and therefore not known and measurable (Staff Ex. PDL-D at p. 5); (ii) because many chemicals are petroleum based, the Company was unwise in procuring pricing in July 2008 when the price of petroleum was significantly higher than later in the year (Staff Ex. PDL-D at p. 5); and (iii) the Company should take advantage of the "opt-out" contract option contained in all of its existing contracts and seek lower pricing. Staff Ex. PDL-D at pp. 5-6.

The Commission will not adopt the Staff position on this issue. The Company has proven that the prices obtained during the 2009 procurement process are known and measurable and should be recoverable in rates. AWWC, on behalf of the Company (and other AWWC subsidiaries) agreed to pricing for 2009 with all eleven of its expected suppliers. Company Ex. WDM-R at p. 17. It entered into Master Service Agreements (or addenda to existing Master Service Agreements) with six of the eleven suppliers. *Id.* Staff at the hearing agreed that recovery should be permitted for the six Master Service Agreements in effect for 2009 pricing. Tr. IV at p. 227 (Latocha). The evidence also established that the Company has binding agreements with the remaining five vendors as to price and is working to finalize terms and conditions of the Master Service Agreements with those entities. Company Ex. WDM-R at p. 17. Staff witness Latocha testified that she had

no basis to dispute the Company testimony that AWWC was contractually bound with respect to pricing for all eleven vendors. Tr. IV at pp. 226-227 (Latocha). Thus, the Commission concludes that the contract prices for chemicals proposed by the Company are known and measurable, and it is reasonable to include those costs in the Company's cost of service calculation for purposes of this case.

The Commission does not find any basis to support the Staff claim that the price of chemicals has fallen as the price of petroleum has fallen. Mr. Morgan asserted in his rebuttal testimony that chemical prices had not fallen consistent with the drop in the price of petroleum. Company Ex. WDM-R at pp. 18-19. Staff stated that (i) it had no basis to question Mr. Morgan's testimony in this regard, and (ii) it had not performed any research or discussed with any vendors whether the price of chemicals had dropped since July 2008. Tr. IV at pp. 229-230 (Latocha). Ms. Latocha stated that she was not specifically aware of any chemicals that could be obtained at a lower rate than those obtained by the Company for 2009. Tr. IV at pp. 233-234 (Latocha).

Similarly, the Commission does not conclude that the Company was imprudent in completing its bidding process in July 2008 or that it should now be required to opt-out of the AWWC contracts for chemicals. Each year the American Water Procurement Department negotiates pricing for chemicals along with terms and conditions to be included in Master Service Agreements for all American Water subsidiaries. Negotiations at this level ensure that the Company obtains the benefit of the superior buying power and bargaining position of AWWC. The Company stated that in the summer of 2008 suppliers warned that chemical prices were going to increase for 2009 and that in some instances chemicals could be difficult to obtain if the Company did not act expeditiously to secure contracts for 2009. Tr. I at pp. 138-139 (Miller). The Company stated that the pricing received from the suppliers still represents the best price available to it, and the Staff did not present any reasonable basis to predict that lower-cost chemicals are likely to be available. Tr. I at p. 141 (Miller). As noted above, Staff did not investigate chemical pricing and does not know of any chemicals that the Company could obtain in 2009 at prices lower than those obtained by the Company through the bidding process.

Further, there is no evidence to suggest that the Company could obtain lower prices today if it opts out of its current contracts. The Commission is reluctant to require the Company to opt out of contracts.

There are a limited number of suppliers that furnish the types and amounts of chemicals required by Company operations. Opting out of a contract could hinder future negotiations or the bidding process by increasing the risk that suppliers perceive in contracting with the Company. Water treatment is the essence of its operations, and the Company must ensure that it has a ready supply of chemicals. Opting out of contracts in this environment could cause the Company difficulties in securing chemicals necessary to serve its customers in the future. Therefore, we approve the Company chemical expense adjustment. We note that since the Commission is not allowing revenue adjustments to

reflect lower levels of sales we shall not adopt that portion of the Company's adjustment that reduces its chemical costs to reflect lower system water deliveries.

**Gasoline Expense**

The Staff recommends in its Rule 42 Exhibit an adjustment for gasoline and diesel fuel expense based on decreases in fuel prices. The CAD stated that the price per gallon of gasoline had fallen by over 30% between July and December 2008. Any number of factors could trigger yet another surge in the price per gallon of gasoline, and the Company may once again find itself paying $2.97 or more for each gallon of gasoline that it purchases or the continued decline in demand for gasoline may keep prices trending downward. Company witness Ware recognized this volatility and recommended that the Commission use the most up-to-date figures available in calculating the gasoline and diesel fuel expenses. Tr. IV at pp. 125-126, 177 (Ware). Neither the CAD nor Staff objected to Mr. Ware's suggestion on this point. The Commission accepts this recommendation on this matter, and will adjust fuel expenses downward by $189,326 based on the current price of regular, premium, and super premium gasoline, of $2.027, $2.119, and $2.225 per gallon, respectively and $2.275 per gallon for diesel fuel.

**Fines and Penalties**

Ms. Crane reduced the Company expenses by eliminating $33,955 in various penalties and fines from test year expenses. The Company stated that it had inadvertently failed to eliminate them. Company Ex. JLW-R at p. 13. The Commission adopts the CAD adjustment as reasonable.

**Group Life and Medical Expense**

The Staff adjustment differs from the Company adjustment for two reasons: (i) the Staff going level adjustment is based on the Staff going level employee count applied to the premiums above, and (ii) the Company used outdated rates for the coverages and Staff used the reimbursement rates of $55 and $128 for "Employees with Dependent Coverage" and "Employees without Dependent Coverage" respectively. The Staff going level adjustment increases test year expense of $2,361,799 by $296,912. A total of $229,821 less than the Company going level adjustment of $526,733. Staff Ex. No. DKH-SD at p. 8. The going level provisions for payroll taxes, workers compensation and employee benefits are based on the Staff going level wage provision. Staff Ex. No. DKH-SD at p. 9.

Because CAD witness Crane made an adjustment relating to employee vacancies, she made a corresponding adjustment to reduce the Company group insurance cost claim. Ms. Crane's adjustment reduces going-level expense by $71,526. CAD Ex. No. 2 at p. 43.

Because the Company did not use the most current reimbursement rates for its calculation, the Company agrees with Staff witness Hatten's going-level adjustments related

to the reimbursement rates used by the Company for life insurance, disability insurance, and health care premiums. Company Ex. No. JLW-R at p. 15. The Commission will adopt the Staff adjustments related to the reimbursement rates used by the Company for its life insurance, disability insurance, and health care premiums.

## AWWSC Management Fees

### *Study of AWWSC Charges in Next General Rate Case*

Company witness Baryenbruch testified regarding the overall AWWSC charges. He addressed whether (i) the Company was charged the lower of cost or market, (ii) the test year costs of AWWSC customer account services were reasonable, and (iii) the services received by the Company were necessary to its provision of public utility services. In addition, and in response to CAD criticism of his previous study, Mr. Baryenbruch addressed the reasonableness of test year AWWSC charges by analyzing publicly filed data concerning similar services provided to FERC-regulated electric and combination gas/electric utility holding companies. Mr. Baryenbruch concluded that (i) the Company was charged the lower of cost or market by AWWSC, (ii) test year customer service charges were reasonable as measured with a proxy group of electric utilities, (iii) the services were reasonably required by the Company, and (iv) the reasonableness of the charges was further confirmed by his analysis of the FERC reports. Company Exs. PLB-D at pp. PLB-1.

The CAD also retained a consultant, Mr. Rubin, to address this issue. Mr. Rubin did not address Mr. Baryenbruch's study, but he recommended that the Commission direct the Company to undertake additional analyses of its AWWSC transactions in its next general rate case. CAD Ex. 3 at pp. 4-5.

The Company opposed Mr. Rubin's proposal to require a study of AWWSC charges in its next general rate case. Company Ex. MAM-R at pp. 93-96. According to Mr. Miller, (i) Mr. Baryenbruch's analyses are adequate to confirm the reasonableness of AWWSC charges and their recovery in rates, and (ii) contrary to Mr. Rubin's suggestion, the Company obtains substantial services from third parties other than AWWSC. The Company also questioned the efficacy of the study envisioned by Mr. Rubin, as many of the services provided by AWWSC do not lend themselves to a request for competitive proposals.

The Commission will not direct the Company to conduct a further investigation of the management fees the Company has paid to AWWSC. This decision does not foreclose the possibility of any party raising issues regarding the nature, extent or fairness of AWWSC charges in future cases.

### *AWWSC Payroll Related Increase*

The Company adjusted its test year expenses for Outside Services to reflect increased management fees from AWWSC. Company witness Miller stated that the Company adjusted

its historical 2007 test year expenses from AWWSC for known and measurable salary increases in 2008. Mr. Miller explained that the Company made a 3% increase to reflect actual pay increases granted to AWWSC employees in April 2008. Company Ex. No. MAM-D at p. 30.

Staff opposed this adjustment. Staff witness Kellmeyer explained that the 3% increase was applied to total management fees instead of just to the wage portion of the management fees. Furthermore, she stated that the Company (i) was unable to provide Staff with any support for the 3% increase in wages at the Service Company level and (ii) admitted that the increase is only an estimate. Staff Ex. No. DLK-D at p. 8.

In response to the Staff position, Mr. Miller asserted that the 3% increase the Company applied to its 2007 test-year expenses was to account for known and measurable changes occurring in 2008. The Company did not attempt to increase that amount for further cost increases for the 2009 rate year. Mr. Miller asserted that (i) pay increases were given to AWWSC employees in April 2008 exceeding 3% on average, (ii) there were also increases other than wages, including pension and group insurance costs increases, (iii) the Company was conservative in its 3% increase, and (iv) Ms. Kellmeyer's remaining basis to oppose the 3% adjustment was that it is an estimate for which the Company did not provide support with a binding contract or invoice. Company Ex. MAM-R at pp. 89-100.

Although Mr. Miller asserts in his rebuttal testimony that the 3% increases applies to more than just salary, the Company failed to provide any support for this adjustment. Part of the Staff opposition to the adjustment is that the 3% increase is applied to total AWWSC charges and therefore applies to expense components other than wages. The Company did not provide any evidence that the increase was limited to AWWSC payroll related increases.

The Commission finds that, although it may be reasonable to provide for known and measurable payroll increases of AWWSC that will be charged to the Company under the agreement with the AWWSC, the Company has not properly documented all of those pay increases. Instead of adopting the Staff position altogether, we find that it is likely that there will be some increase in AWWSC payroll-related charges. To provide some allowance for that increases in rates in this case would be reasonable, but we conclude that the entire amount requested by the Company is not supported. Instead, the Commission will allow 50% of the Company's adjustment for this item.

***AWWSC Pension Costs***

Staff recommended the Commission reject the Company $359,164 adjustment to reflect AWWSC pension expenses contributed to the AWWC pension trust fund on an ERISA basis rather than a FAS 87 basis for pension recovery. Staff Ex. DKH-SD at p. 10.

Mr. Miller objected to the Staff adjustment testifying that Staff (i) did not dispute his direct testimony (Company Ex. MAM-D at p. 30) on ERISA pension expense and the 2008

contributions to the AWWC pension trust fund, (ii) did not address the supporting documents that were presented in the Company workpapers, and (iii) failed to acknowledge that the 2008 contributions were based on independent actuarial projections. Mr. Miller also addressed the Staff assertion that the Commission has always limited its recognition of ERISA to the Company direct employees. He testified that AWWSC has historically recorded and billed the Company pension expense on an ERISA basis through 2006, and then under FAS 87 since that time.

Mr. Miller further testified that prior to the adoption of FAS 87 by AWWSC, the Company used a regulatory asset and offsetting liability for the timing difference between FAS 87 and ERISA expenses. Mr. Miller explained that upon adoption of FAS 87 at AWWSC, the Company wrote-off the AWWSC pension liability. That write off offset the write-off of the asset at AWWSC., and left the Company with a regulatory asset representing the timing difference between ERISA and FAS 87 (which under FAS 71 must be demonstrably addressed in rate recovery). Mr. Miller urged the Commission to either adopt ERISA or FAS 87 for the AWWSC costs. If the decision is FAS 87, then the Company maintains that there should be an appropriate amortization of the regulatory asset to avoid an unfair and unwarranted write-off on the Company books in excess of $1,000,000. Company Ex. MAM-R at pp. 91-93.

The Commission concludes that the AWWSC pension expenses should be paid pursuant to FAS 87. Therefore, the Commission will not allow the proposed adjustment to reflect an ERISA-based expense. However, based on Mr. Miller's testimony the Commission will provide an offsetting adjustment of $100,000 to reflect amortization of the regulatory asset to avoid an unfair and unwarranted write-off on the Company books.

***AWWSC Defined Contribution and Defined Benefit Costs***

CAD witness Rubin proposed adjustments to pension benefits paid to AWWSC employees asserting that employees were being double counted, thus inflating Company costs. CAD Ex. 3 at pp. 10-11, Schedule SJR-4 to 6.

Mr. Miller described the difference between the Defined Contribution Plan ("DCP") and the Defined Benefit Plan ("DBP"), and how the respective costs borne by AWWSC were allocated and billed to the Company under the contract. Company Exs. MAM-R at pp. 98-99, and MAM-24. He disputed Mr. Rubin's assertion that these costs had been double counted and explained that Mr. Rubin's proposed adjustments arose from his misunderstanding of a single schedule provided in the Company workpapers. Mr. Miller acknowledged that workpaper page 289 incorrectly included both the DCP percentage and the DBP percentage in the calculation of a payroll overhead factor of 67.39%, but that this overhead factor was utilized only to determine the deduction from test-year management fees for four AWWSC employees transferred to the Company, thus actually overstating the reduction to test-year expense, effecting a detriment to the Company.

The Commission concludes that the Company demonstrated that there has been no duplication of the AWWSC pension expenses in test year management fees. The Commission will not adopt the pension-related adjustment recommended by the CAD.

***AWWSC Annual Incentive Plan Costs***

Mr. Rubin proposed an adjustment to disallow the annual incentive plan ("AIP") costs applicable to the AWWSC. Mr. Miller stated that Mr. Rubin's proposed disallowance of AIP costs, in the amount of $395,379, was similar to Ms. Crane's reasoning in the context of AIP costs for the Company employees. Mr. Miller stated that (i) the same AIP benefits described in the 2003 Rate Case Order apply to the compensation of AWWSC employees and (ii) the Commission has never excluded AWWSC AIP costs from the Company revenue requirement. Company Ex. MAM-R at pp. 96-97.

The Commission will apply the same decision that it made with regard to the AIP for the Company direct employees to this issue.

**Advertising**

The Company claims that it incurred $162,600 in advertising costs during the test year. CAD witness Crane proposes that the Commission disallow all costs for informational, promotional, and other advertising, with the exception of costs associated with the Company webpage. CAD Ex. 2 at p. 52. Ms. Crane testified that some of the Company advertisements serve no purpose other than promoting the Company corporate image, and that ratepayers should not be required to fund such advertisements. *Id.* at 53. Staff did not contest the Company advertising expense.

The Company stated that a good portion of its advertising is directed at educating and informing customers about the services the Company provides. Company Ex. JLW-R at 20; Company Ex. WDM-R at p. 20. Mr. Ware stated that Ms. Crane's testimony is somewhat misleading; he claims that Ms. Crane simply pulled select quotes from certain Company advertisements and presented them out-of-context in an effort to condemn a significant portion of the Company advertising expense. *Id.*

While the Commission views the recovery of "image" advertising expense by a utility as extremely suspect, the Commission is not convinced that all of the Company advertising was promotional in nature or was devoid of any value to the Company customers. Some of the advertisements did provide customers with useful and important information. Ms. Crane declined to distinguish between Company advertisements that promote the Company image and Company advertisements that provide customers with useful and important information.

It would be unfair to deprive the Company of the right to recover costs associated with advertisements that convey useful and important information to customers, and Ms. Crane's adjustment would eliminate some prudent advertisement expenses. Given the evidentiary

record in this proceeding, however, we have concluded that the Company will not be entitled to recover one third, or $54,200, of its test year advertising expenses.

In future rate cases, the Company must provide the Commission with more credible proof of what it believes to be informational advertising verses promotional or image advertising, and the Commission will not accept as probative bald assertions that "a portion" is directed to educating and informing the public about Company services.

## Payroll

As background, the Company total going level labor was $20,922,678 compared to test year wages of $18,499,656 – a 13.10% increase in labor costs. Of the $2,423,022 increase, the Company expensed at going level $2,317,437, or 95.63% of the total increase. Staff witness Hatten stated this was unreasonable for a number of reasons, including unsupported estimates, use of an incorrect expense factor, use of cash payroll, and inclusion of ten new employees. The Staff going level payroll adjustment is an 8.24% increase over test year, and it increases O&M test year expenses by $1,116,087, which is $1,201,350 less than the Company's wage adjustment of $2,317,437. Staff also adjusted any applicable payroll taxes and benefits for the decrease in going level wages. Staff Ex. No. DKH-SD at pp. 2-8. The CAD objected to a smaller portion of the Company's payroll adjustment, but for different reasons.

### *Appropriate Number of Employees and Annualization of Payroll For All New Positions and Use of Cash Payroll*

The Company requested that the payroll expense used in this case be based on a level of 321 employees. This employee level is an increase of twelve employees over the 2007 test year. Company Ex. WDM-D at p. 29. Company witness Morgan explained that four of the twelve new positions were AWWSC employees who were transferred to the Company because they provided services primarily to the Company. Company Ex. WDM-R at p. 15. Mr. Morgan also explained that the remaining nine new positions were necessary to work in the areas of leak detection, valve maintenance and replacement, and cross-connection/backflow prevention. Company Ex. WDM-R at p. 15.

Staff recommended that the Commission disallow ten of those positions from going level wages. Staff Ex. DKH-SD at p. 3. Mr Hatten indicated that the addition of these employees would violate the matching principle without reductions in overtime expenses. Tr. IV at p. 243 (Hatten).

There was considerable testimony on the issue of the addition of new employees during and after the end of the test year. We find that the Company has provided evidence that the employees in question have been added. A similar issue was addressed by the Commission in the Company's 2003 Rate Case. In that case, the Commission approved increases over the test year employee level based on the fact that the employees had actually

been added to the payroll prior to our decision. In this case, as in the 2003 Rate Case, the Commission finds that the Company has provided sufficient evidence to support the employee level that it reflected in its payroll adjustments.

CAD witness Crane did not object to any of the twelve new positions. However, she proposed an adjustment based on anticipated vacancies. CAD Ex. 2 at pp. 30-31. Ms. Crane recommended using a vacancy rate of 2.7%, based upon her calculation of the aggregate period during which fewer of the Company's employees were actually employed during the test year. The Staff did not make a specific vacancy rate adjustment. It did, however, produce a similar end result by recommending that the Commission limit test year employee levels to the actual hours worked during the test year. Staff argued that the Company's annualization of salaries and wages for test year employees was improper and violated the matching principal. Staff witness Hatten described the adjustment that the Company made as follows:

> The Company excluded from payroll all employees who were terminated or retired during the test year. In addition each new employee was treated at going level as though they were employed for the whole year. The handling of new and terminated or retired employees in this manner violates the matching principle.

Staff Ex. DKH-D at p. 4. Staff would simply leave test year employee levels unadjusted. To understand the effect of Staff's position on this issue, the Commission considers a position that is filled by an employee for six months of the test year and that employee then leaves the Company. If that position was filled by a new employee in October, there would be 9 months of pay for that position in the test year. The Company would effectively annualize the payroll cost of that position by eliminating the initial employee and annualizing the salary or wages of the new employee. Staff opposed that adjustment as a violation of the matching principal and would simply leave the test year level of 9 months worth of payroll cost in the revenue requirements. Although not the same as the CAD vacancy rate adjustment, this approach recommended by Staff has a similar effect of locking in the vacancy rate of the test year.

The Company provided evidence at the hearing that the vacancy rates the Company has experienced since 2005 are not likely to be representative of the Company's situation in the rate year. The lower employee levels that the Company had in 2005 and 2006 were the result of a reorganization that shifted employees from the Company to the AWWSC payroll. Tr. IV at pp. 178-179 (Ware); Tr. I at pp. 120 (Miller). Additionally, the Company witnesses testified that Mr. Morgan reevaluated vacancies to determine precisely how many employees the Company needed to serve its customers. Tr. I at pp. 177-178 (Miller); Tr. IV at pp. 179-180 (Ware). Mr. Morgan's review delayed some hiring, but provided the Company's management with a fuller understanding of its personnel needs. Tr. IV at p. 179 (Ware). The Company also provided testimony that it implemented a hiring schedule that provides for an overlap period between incoming and outgoing employees, for improved training of new employees. Tr. IV at pp. 180-181 (Ware).

As best we can determine, the Commission has never made a payroll adjustment to reflect an anticipated vacancy rate in the manner described by Ms. Crane Even if we were inclined to plow new ground with this adjustment, the Company submitted evidence sufficient to support the conclusion that the test year vacancy rate is likely not to be representative of the Company's vacancies in the immediate future. The Commission accepts the Company-proposed employee level of 321, and declines to apply a vacancy rate to that authorized employee level. Similarly, Company arguments in opposition to the CAD vacancy rate adjustment provide support for the Commission to refuse to adopt the Staff proposed disallowance of the Company's approach that all positions filled as of the end of the test year will be filled during the entire test year. The Commission will not adopt the Staff methodology in this case.

Staff raised an additional issue which it referred to as the use of "cash payroll" versus "accrued payroll". Staff witness Hatten testified that the Company had based its test year payroll calculations on the amounts actually paid to the employees during the test year rather than the accrued payroll for the test year. This resulted in 2007 payroll in the Company's calculations that included a portion of 2006 hours worked for the first payroll of 2007 and which excluded a portion of 2007 worked for the last payroll of 2007. Because of the timing of pay periods, this cash basis approach resulted in more out-of period payroll hours being added at the beginning of the test year than the in-period hours that were excluded at the end of the test year. As described by Mr. Hatten:

> The Company included in going level effective hours, 80 hours of 2006 payroll for all hourly (union and nonunion) employees on the payroll as of January 1, 2007 and did not include 8 hours for all hourly employees on the payroll as of December 31, 2007.

Staff Ex. DKH-D at p. 5. Staff corrected this overstatement of test year hours by adjusting test year payroll as reflected in the Company's filing downward by $422,898.

The Company did not question the accuracy of Mr. Hatten's calculations with regard to the manner in which the Company determined test year payroll levels. The Commission shall adopt the Staff's adjustment to eliminate the out-of-period (2006) hours included in the Company's test year payroll levels and to include the accrued 2007 hours that were excluded from the Company's test year payroll levels.

***Wage Levels***

The Company modified test year wages by including 3% increases for 2008 and 2009 for its union and non-union hourly and salaried employees. Company Ex. JLW-D at pp. 9-10. The CAD recommended that the Commission deny all non-union adjustments, both hourly and salaried, for 2009. Tr. III at p. 106 (Crane). CAD witness Crane stated that because such increases are not contractually required, they are "speculative and do not meet the known and measurable criteria for post-test year adjustments." CAD Ex. 2 at p. 28. Staff objected to the

3% pay raise for salaried employees for 2009 for essentially the same reasons as Ms. Crane, although Staff included increases for non-union hourly employees in its case. Staff Ex. DLK-D at pp. 7-8.

The Commission views the non-union hourly increases proposed by the Company for 2009 and the salaried employee proposed increase for 2009 separately. The Company has demonstrated that it provides pay increases to its non-union hourly employees commensurate with the pay increases it provides to its union employees. Tr. IV at pp. 164-165 (Ware). Further, no party has argued that those increases are unreasonable as granted (although nothing would preclude such an argument). The Commission recognizes the similar treatment the Company has historically afforded its union and non-union hourly employees in the 1994 and 2003 Rate Cases, and in both of those cases granted the Company request for non-union hourly wage increases commensurate with the contractually required union raises. The Commission will provide for a 3% increase in 2008 and 2009 for both union and non-union hourly employees.

***Incentive Compensation and Salaried Employees***

The Commission finds that the current circumstances facing the Company's customers demand a modification of continuing projected post-test-year adjustments for salaried employees. These are tough times and everyone must do some belt tightening. This includes the Company and its salaried employees. The Commission will not encourage a continuation of what some may consider an entitlement to annual salary increases year after year. Accordingly, the Commission will not require customers to pay for 2009 salary increases that had not been granted as of the date of our hearing and, if truly planned, should be considered carefully by management, particularly given the current state of the economy.

The Company participates in the American Water Annual Incentive Plan ("AIP") to provide employee incentive compensation based on financial, operational, and individual goals. Under the AIP, employee awards are dependent on the Company meeting a threshold level of operating income. Once that threshold is met, individual employee awards are dependent on such factors as corporate and regional financial performance, operational performance, and individual performance.

Company witness Miller stated that (i) customers benefit from the efficiency and productivity gains that the AIP encourages, (Company Ex. MAM-R at pp. 84-85); (ii) incentive compensation programs like the AIP are a part of most public utility compensation packages, (*Id.* at p. 84); (iii) in the absence of the AIP, the Company compensation plan would not be competitive, and the Company would likely be unable to attract and retain employees with the requisite qualifications and technical skills, (*Id.)*; and (iv) the customers benefit when the Company is able to recruit, retain, and motivate highly qualified employees. *Id.*

The CAD opposed any recognition of the 2007 incentive compensation costs. CAD

witness Crane testified that (i) the Company employee salary and wage levels appear reasonable even in the absence of the AIP, (CAD Ex. 2 at p. 34); (ii) incentive compensation programs such as the AIP benefits the Company and its shareholders, but does not provide a direct benefit to ratepayers, (*Id.* at p. 37); (iii) the prospective incentive plan payments are not known or measurable because they are based on future levels of operating income and other variables that cannot be quantified with certainty until the end of each year; (iv) because the AIP is dependent on the Company level of operating income, it does not represent the same Company obligation as other payroll commitments, (*Id.* at p. 35); and (v) the Company experienced an eighty percent increase in incentive compensation between 2002 and 2007.

Mr. Miller responded that more people had become eligible for incentive compensation (Tr. I at p. 115 (Miller)), a factor Ms. Crane did not include in her analysis Tr. III at pp. 107-108 (Crane).

The Commission previously addressed the arguments set forth by the CAD and found them unpersuasive:

> [I]t appears that it is the 'incentive' and not the compensation that draws the ire of the [CAD]. The Commission realizes that the Company could very well do away with its long-term incentive plan and instead spread the money in the form of salaries. In the present case, no party objected to the overall salary expense and it is unlikely that the addition of an additional $139,070 to the current salary expense would have triggered any outrage among the parties. Furthermore, at the bottom line, the Commission realizes that all employees of the Company are working not only to provide clean, safe, and potable water to the citizens of West Virginia but are also working as employees of the stockholders with an end towards maximizing stockholder wealth. The incentive compensation is merely a different means of providing such motivation. To the extent employee incentives result in efficiencies and/or increased productivity stockholders are benefitted, but eventually such benefits will be reflected in lower revenue requirements and lower rates.

*See*, 2003 Rate Case Order at pp. 70-72. The Commission determined in the 2003 Rate Case that both stockholders and ratepayers benefit from increased productivity and operating efficiencies, and allowed recovery of expenses related to the incentive program at issue. *Id.* Ms. Crane stated that she knew that her determination was inconsistent with Commission precedent, and she made no attempt to determine whether any changes had been made to the incentive compensation plan because that might justify any change in the Commission approach used in the 2003 Rate Case. Tr. III at p. 48 (Crane).

The Commission rejects the CAD arguments and will allow the inclusion of the costs of the AIP in the revenue requirement in this case.

*Labor Expense Rate*

The Company used a labor expense rate of 71.88%. Staff stated that (i) test year cash wages include 2006 wages paid in 2007, but did not include 2007 wages paid in 2008, and (ii) that the Company added $440,642 in incentive pay, but expensed only $250,961. Staff computed the labor expense percentage by comparing wages expensed during the test year with total wages, with a resulting labor expense rate of 70.72%. The Company did not dispute the Staff adjustment. Company Ex. JLW-R at p. 7. The Commission believes that this adjustment is reasonable, and will adopt it.

**Postage**

On May 12, 2008, the United States Parcel Service ("USPS") increased its postal rates by various amounts for First Class Mail, Standard Mail, Periodicals, Package Services, and Special Services. The cost for postage for a one-ounce First Class Mail letter increased from $0.41 to $0.42, two-ounce First Class Mail letters increased from $0.58 to $0.59, and Large Envelope mail increased from $0.97 to $1.00. The Company increased its test-year postage costs by $48,067 based on these 2008 increases. Company Ex. JLW-R at pp. 11-12.

To determine the expense level based on these increases, the Company used detailed historical data for the test year. The Company sorted the units of mailings by postage type charged, and then re-priced each grouping utilizing the new postage rates to arrive at going-level postage costs. Based on this information, the Company identified and was able to re-price postage on over 94% of its current postal expenses based on the classifications provided by the USPS. A small portion of costs in the test year postal expenses were general or miscellaneous mailings that occurred during the test year but did not fit any particular category. For this small portion of mailings, the Company applied an average rate of increase to those actual postage costs for the test year. As a result of this analysis, the Company made an adjustment to its postal expenses of $48,067. Company Ex. JLW-R at pp. 11-12.

Staff witness Kellmeyer rejected the increased costs for the miscellaneous category, suggesting that they were not known and measurable. Staff Ex. DLK-D at 6-7. This adjustment reduced the Company postage expense by $2,898.

In response, the Company stated that it had correlated the specific increases to test year mailings, and that the remaining undetailed characterization was used only to cover general mailings. The Company stated that simply because it could not specifically categorize these expenses did not mean that those mailings would not be subject to an increase, or that those increases were not known and measurable. Company Ex. JLW-R at 11-12.

Staff has not suggested that these miscellaneous costs were not actually incurred by the Company for postage or that these mailings will not experience an increase. The Company will continue to have general or miscellaneous mailings in the rate year. Staff is implicitly suggesting that, to recover the extra $2,898 in postage costs, the Company should go through

each miscellaneous mailing and determine the actual increase to each particular piece of mail. We fail to see how such an exercise could provide any meaningful benefit to our analysis in setting a level of recoverable postage expense. The Company has taken sufficient steps to detail the increase in test year postage costs, and we therefore will not reduce the Company's postage expense by $2,898.

**Rate Case Expense**

The Company requested a two-year amortization of its estimated costs for the current rate case of $754,000. The Company also included unamortized costs of $123,680 relating to the previous rate case. Company Ex. No. JLW-D at pp. 14-15 and Company Revised Rule 42. Neither Staff nor the CAD challenged the level of the Company rate case expense for this case.

Staff, however, disagreed with the Company amortization of the rate case expense from a prior case in addition to one-half of the estimated cost of this case. Ms. Kellmeyer cited page 18 of the Commission May 22, 2007 order in *Monongahela Power Company and The Potomac Edison Company, both dba Allegheny Power*, Case No. 06-0960-E-42T, ("*Mon Power*") for the proposition that prior rate case expenses cannot be recovered in a current rate case and that the Commission reflects rate case expenses based on one-third of the cost of a the current rate case of the utility. Thus, Staff normalized the Company estimate of the cost of the current rate case over three years. Staff Ex. No. DLK-D at p. 9. During questioning by the Commission, Staff witness Kellmeyer agreed that with rate case expense, if it is normalized or amortized over three years and the Company files a rate case after two years, then the unrecovered one-third portion is discarded.

CAD witness Crane recommended two adjustments, (i) for the current rate case, a three-year amortization because the Commission has traditionally used a three-year recovery period, and (ii) elimination of the costs from the prior case because the Commission has generally not included claims for past rate cases in current regulatory commission expense. Ms. Crane cited Case No. 06-0960-E-42T in support of her position. Ms. Crane's adjustments reduce the Company going-level expenses by $249,347. CAD Ex. No. 2 at pp. 51-52.

The Company distinguished its situation from that in the 2007 *Mon Power* Order in that the electric companies involved in the *Mon Power* case had not incurred rate case expenses in the three preceding years. Tr. I at p. 122 (Miller). Mr. Miller stated that the CAD and Staff approaches would result in a confiscation of the Company-incurred cost of preparing for and litigating the 2007 Rate Case – costs legitimately incurred and agreed upon by all parties in the settlement agreement in that case. Company Ex. MAM-R at 101, *see also*, Tr. III at pp. 108-111 (Crane) and Tr. V at pp. 122-123 (Kellmeyer) (each witness acknowledging that Staff and CAD approach would result in 2007 rate case costs not being recovered).

The Commission previously explained:

> Although the parties, and even the Commission, often refer to a rate case allowance as being an 'amortization' of rate case expense over some period of time, the Commission has historically allowed an increment for rate case expenses not subject to deferral or amortization. The term amortization has become a common usage for an averaging of rate case expense over some period of time. The CAD's proposal, which includes an argument that 'unamortized' amounts from this case can be recovered in a future rate case, is inconsistent with the Commission's past practices. Although deferral and amortization have been used for some significant non-recurring items, we have not historically considered rate case expense as falling into this category.[6] Whether we allow an increment for rate case expenses based on an average of three years, five years or any other period, we do not authorize the Companies to defer rate case expenses and amortize these expenses. Thus, contrary to the CAD's suggestion, there would be no unamortized balance for the Companies to recover in future cases. The Commission shall follow its past practice of reflecting rate case expenses based on one-third of the cost of the Companies' current rate case.

*Monongahela Power Company and The Potomac Edison Company, both dba Allegheny Power*, Case Nos. 06-0960-E-42T and 06-1426-E-D (Commission Order May 22, 2008) at p. 18 (including footnote which is quoted below as a footnote)). The Commission will not authorize the Company to recover the rate case cost from the prior case.

The Company proposes to amortize rate case expense costs over two years, without interest. The CAD noted that the Commission "traditionally utilize[s]" a three-year amortization period for the recovery of rate case expenses, and therefore proposes a three-year recovery period. CAD Ex. 2 at p. 51. Because the Company costs and expenses are recovered without interest or other compensation, allowing 50% of the current rate case expense as a part of the requirements in this case, as the Company proposes, is reasonable. This ratemaking treatment is to allow a reasonable amount for Regulatory Commission Expenses in rates on a going-forward basis, and is not intended to reflect an authorization for deferral of current rate case expenses and an amortization of the deferred amount over some number

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[6]*See e.g., The Potomac Edison Company*, Case No. 79-230-E-42T, Order dated June 30, 1980. (Discussing Rate Case Expenses) – This Commission must make rates to be followed in the future, not the past. While we occasionally allow past unrecovered expenses to be included in a Company's cost of service . . . such treatment has been limited to instances in which the expense is clearly extraordinary in nature. *Armstrong Telephone Company*, Case No. 92-0884-T-42T, Order dated May 28, 1993 – As to the first issue, prior rate case expense, the allowance over time, and not an intention to defer and amortize costs that are properly expensed in the years incurred . . . . [C]costs associated with the Company's prior rate case should not be included in its test year calculations. (*See*, The Potomac Edison Company, Case no. 8280, 64 ARPSCWV 352 (1977); and Columbia Gas of West Virginia, Inc., Case No. 9147, 66 ARPSCWV 488, (1978)).

of years.

**Relocation Costs**

The Company proposed recovery of $137,837 in relocation expenses. This amount represents the actual relocation costs incurred by the Company during the test year. Company Ex. JLW-R at p. 19. Neither Staff nor the CAD accepted the Company proposal to include all relocation expenses from the test year. Staff eliminated all of the relocation costs incurred by the Company in the test year, stating that these costs were non-recurring. Staff Ex. DLK-D at p. 9. The Company responded that it had incurred relocation expenses in each of the past six years. Company Ex. JLW-R at p. 19. The Commission concludes that while volatile from year to year, the Company has incurred relocation expenses each year. Thus, the Company should not be prohibited from recovering relocation expenses in its rates.

Unlike Staff, the CAD did not suggest elimination of the entire relocation expense. Instead, the CAD suggested that the Commission normalize relocation expenses by using a three-year average of relocation costs. CAD Ex. 2 at p. 44. As the CAD noted, relocation costs can vary significantly from year to year, depending upon the number of relocations that occur and the complexity of each move. The Company has agreed to the CAD approach. Company Ex. JLW-R at p. 20.

The approach suggested by the CAD and concurred in by the Company is reasonable. The relocation adjustment will mitigate year-to-year fluctuations and provide an appropriate estimate of the level of costs likely to be incurred in the rate year.

**Tank Access Road Maintenance and Security Costs**

The Company sought $250,000 for miscellaneous expenses pertaining to costs associated with tank access road maintenance and security. Both the CAD and Staff rejected this expense, asserting that it was a mere estimate and not known and measurable. Staff Ex. DLK-D at p. 9; CAD Ex. 2 at pp. 56-57. The Company did not contest the Staff and CAD adjustment, and we conclude that there is insufficient evidence that the $250,000 is known and measurable. The Commission will reject this expense.

**Tank Painting**

The Company uses a fourteen-year average of tank painting expenses as the basis for rate recovery, an approach that was approved by the Commission in Case No. 84-008-W-42T. The Company used the same approach in this case, but it made an error in calculating the 14-year average by including some tank painting cost expenses from 2005 in 2006. Both Staff and the Company agreed that tank painting expense for 2005 should be $750,643 instead of $1,082,208, and that the amortization of tank painting expense should be reduced to $333,255 from $358,336. Company Ex. JLW-R at pp. 17-18; Staff Ex. DLK-D at p. 6. We accept this adjustment as reasonable.

**T&D Mains (Paving Costs)**

The Company made an adjustment in its Revised Rule 42 to reflect a known increase in paving costs. The Company has renegotiated its contracts with its paving providers and made an adjustment in its revised exhibit to cover these costs. Company Ex. JLW-D at p. 16. Staff, however, suggested that such costs were not known and measurable. Staff Ex. DLK-D at p. 9. In response, the Company noted that it had provided a calculation of going level paving costs on pages C-137 through 143 of the Company's revised workpapers. This calculation was prepared utilizing historical detailed data, which were re-priced at the new contracted rates. JLW-R at p. 17. The Commission finds that these new contractual paving obligations are sufficiently known and measurable. We will adopt the Company adjustment.

**Uncollectible Accounts**

The Company proposed an uncollectible rate of 1.555%, based on the average of charge-offs (net of recoveries) for the years 2005, 2006, and 2007. The CAD rejected this adjustment, asserting that the use of a three-year average will overstate the Company going-level uncollectible costs. CAD witness Crane asserted that the authority the Company obtained in 2004 to collect a late payment penalty has reduced the Company uncollectible rate, offering the fact that the Company uncollectible rate declined each year from 2005 to 2007 as evidence of this assertion. CAD Ex. 2 at p. 26. CAD witness Crane recommended that the Commission recognize an uncollectible rate of 1.308%, the actual test year rate. *Id.* Ms. Crane's proposed uncollectible rate would result in a reduction to the Company going-level uncollectible expense of $286,694.

In response, the Company noted that the Commission has historically ruled that uncollectibles should be averaged. The Commission previously concluded that a given test year might be unusual, and that the use of an average may "smooth out" aberrant uncollectible rates. As we stated in the 2003 Rate Case:

> The average helps eliminate the impact of an unusual year. A three year period is a reasonable period for developing an uncollectible average because it captures current trends and economic conditions while still providing normalization or leveling of anomalous consequences and should be consistently used in rate cases whenever feasible.

2003 Rate Case Order at 82-83.

The CAD has failed to persuade us to depart from the methodology that we have historically used, and that the CAD specifically proposed in 2003. Although it is true that uncollectibles have declined for the Company for 2005, 2006, and 2007, we are not convinced that uncollectibles will continue to decline. Indeed, in the 2003 Rate Case we indicated that an average was appropriate, even though the uncollectible rate had increased each of the past three years. We conclude that the use of an average helps to normalize the uncollectible rate.

Ms. Crane admitted that, in most cases, she has used a multi-year average. Tr. III at pp. 58-59 (Crane). The Commission rejects the CAD proposed adjustment, and approves the Company proposed uncollectible rate of 1.555%.

**Waste Disposal**

Staff witness Latocha asserted that the Company did not provide a justification for its going level adjustment to increase waste disposal cost expense by $23,362 in its Rule 42 Exhibit, work papers or testimony. The Company witness testified that it would reduce waste disposal expenses in addition to power and chemical costs to reflect its estimated system delivery volumes. It does not appear the Company made this adjustment, but if it had Staff would not have accepted it in order to be consistent with Staff witness Kellmeyer's rejection of the (i) Company reduction of revenue for its estimate of declining sales and (ii) the Company estimated savings caused by a decrease in unaccounted for water. Staff did not adjust the waste disposal expense. Staff Ex. No. PDL-D at pp. 7-8.

CAD witness Crane stated that the Company made a going-level adjustment to increase its waste disposal costs without providing any supporting testimony or workpapers. Ms. Crane recommended the Commission deny this adjustment and reduce the Company going-level expense by $23,362. CAD Ex. No. 2 at p. 50.

Company witness Mr. Morgan asserted that the increased disposal costs are (i) a direct result of the recent passage of 3 CSR §9, *Standards for the Beneficial Reuse of Filtrate from Water Treatment Plants*," and (ii) known and measurable and total $23,362 annually. Company Ex. No. WDM-R at pp. 19-20. The Company agreed that none of the costs identified in the $23,000 figure were incurred in the test year nor were any of the costs incurred in 2008 as of the date of the evidentiary hearing. Furthermore, the Company agreed that Exhibit JLW-2 shows that none of the costs will occur until January 2009, and some as late as the summer of 2009. Tr. IV at pp. 128-133.

Initially, the Commission notes that the Company should have provided its justification for its Statement G adjustment in its workpapers filed with its Rule 42, and not waited to file its support with its rebuttal testimony. In the future, the Company should ensure it sufficiently supports all of its requested adjustments as part of its direct case because it is the Company that bears the burden of proving the adjustments are reasonable. Nevertheless, in this instance the Commission does not believe that the parties were prejudiced by the delay caused by the Company.

While the Company anticipates incurring these costs in the near future, the Company has in fact not yet incurred these costs. Indeed, the Company has acknowledged that some of these costs will not occur until October 2009. The Commission cannot conclude that these costs are known and measurable at this time. The Commission will not adopt the Company adjustment on this issue.

## REVENUE ISSUES

### Declining Residential Sales Adjustment

To determine going-level revenues, the Company utilized a bill analysis reflecting the actual billing determinants for the test year, adjusted for any known and measurable changes that occurred during the test year or that will occur prior to rates being placed into effect. Company Ex. JLW-D at p. 5. The sole issue in dispute relating to going-level revenues relates to the Company claim that it is experiencing an ongoing decline in average usage per residential customer and that the use of an abnormally high level of residential usage from the 2007 test year will overstate revenues in the rate year. To normalize the effect of the residential sales level, the Company included in its filing a reduction in annual usage per residential customer of 68.5 million gallons below the test year level. Company Ex. JLW-D at p. 6; Company Ex. MAM-D at pp. 42-43. An adjustment to reflect the reduction of 68.5 million gallons of going-level sales for the Company would increase Company revenues by $641,104.

The CAD suggested that the proposed adjustment does not constitute a known and measurable change, but that it instead was "speculative and not based on actual results." CAD Ex. 2 at p. 24. Staff agreed, suggesting that the adjustment is based on an estimate that is not known and measurable and violate the matching principal. Staff Ex. DLK-D at p. 4.

In response, the Company asserted that its historical residential sales per customer has continually trended downward since approximately 1995, and that on average, residential sales per customer declined 448 gallons per year during this period. The Company also showed that although test year average monthly usage per residential customer, 3,783 gallons, is 76 gallons per month more than in 2006, it is 299 gallons per customer less than the average monthly residential usage for 2000, and lower than any other year since 1999 (with the exception of 2006). Company Ex. MAM-D at pp. 43-44.

The Company also asserted that a downward trend in sales is not unique to the Company, as water utilities across the country are facing the same issue. The Company has provided studies in past rate cases concerning the drivers of this trend, including (i) an aging population, (ii) smaller family size, (iii) the lack of outdoor use, and (iv) the increasing prevalence of low flow plumbing fixtures and other energy saving appliances. Tr. I at p. 192 (Miller). The Company believes there is a reasonable expectation that this trend will continue. Further, the Company is not aware of any major commercial or industrial customers that may come on line in the next few years. Company Ex. MAM-D at pp. 43-44.

The Commission will reject the proposed adjustment. The Commission has not approved similar requests by the Company in the past, even in the face of more explicit proof that revenues had decreased. *See*, the 2003 Rate Case Order regarding the Great Lakes Chemical Plant industrial customer. In the present case the Company did not provide sufficient information to determine whether a temporary factor, such as weather, had an

impact on usage during the test year. CAD Ex. No. 2 at pp. 23-25, Tr. III at pp. 59-64. More importantly, the Commission is not convinced by the Company assertions that such a trend, if it exists, will continue. It is reasonable to suppose that there exists a "lower" or minimum level of water usage below which it becomes more difficult for typical customers to drop. If so, the downward trend in usage is likely to flatten and usage levels will stabilize. It is possible that this "lower" or minimum level averages 3,800 gallons per month.

The Commission is not persuaded to depart from its prior practice of not granting such revenue reductions that (i) are not known and measurable and (ii) violate the matching principle.

**Local B&O Tax Adjustment**

Prior to the 2003 Rate Case, the Company typically made an adjustment at going-level to eliminate city B&O revenues and tax amounts ("B&O Taxes") from the cost of service, suggesting that the Company acts only as a collection agent for the B&O Taxes. In the 2003 Rate Case, the Staff disagreed with the Company conclusion that it was only a collection agent, insisting that the collection of B&O taxes has a revenue/expense impact that should be factored into the Company cost of service. Company Ex. MAM-R at p. 81. In that case the Staff recommended that the Commission increase test year revenues by the amount by which B&O Tax collections exceeded B&O Tax payments. As seen in Appendix A at pages 2 and 3 of the 2003 Rate Case Order, the Commission included an adjustment for B&O Revenues and Expenses in Company rates. 2003 Rate Case Order at Appendix A.

Pursuant to the 2003 Rate Case Order, in this proceeding the Company did not eliminate the revenue and expense impact of the B&O Taxes from its cost of service. Company Ex. JLW-D at pp. 6-7. Unlike 2003, however, where B&O Tax revenues exceeded expenses, in this instance expenses paid out by the Company in the test year for B&O Taxes exceeded revenues by $252,910.

The Commission concludes that no material changes have occurred with respect to the collection and remittance of B&O Taxes that would necessitate a change in position by the Commission. While the Staff adjustment eliminates any mismatch between the booked B&O tax expense and booked tax surcharge revenue, it would be unreasonable to include booked levels of B&O Taxes and tax surcharge revenue in rate cases where the Company's revenues exceed its expenses, but then adjust out both revenues and expenses from the test year when expenses exceed revenues. We will maintain the approach used in the 2003 Rate Case.

**TAXES (CONSOLIDATED TAX ISSUE)**

The calculation of Federal Income Taxes created significant differences of opinion among the Company, CAD and Staff. Each party presented a calculation reflecting an effective tax rate that was lower than the statutory tax rate applicable to the Company on a

stand alone basis. The Company, however, calculated a much higher effective tax rate than that calculated by the CAD and Staff.

The Company filed its case reflecting tax losses of certain members of the consolidated income tax group, which includes the Company. Although adjusting the tax rate to a lower effective tax rate uses losses of a relatively small number of companies in the consolidated group, the method used by the Company primarily focused on the parent company loss and has come to be known as a parent company loss adjustment ("PCLA"). Applying the PCLA, the Commission takes into account the tax losses of the Company corporate parent (AWWC), AWWSC, and a few other companies in the calculation of an effective tax rate.[7] Because these companies generally generate tax losses, their inclusion in the calculation produces a lower effective tax rate than the 35% statutory FIT rate that would apply to members of the group with taxable income if they filed on a stand-alone basis.

The Company argues in this case, and has argued in the past, that it is required to pay an amount equivalent to 35% of its taxable income to the American Water consolidated tax filing group ("Consolidated Group") in each year that it has a positive taxable income. This requirement is the result of an agreement among the affiliated members of the Consolidated Group. Because of this agreement, the Company asserted that the Commission application of the PCLA typically allows the recovery in rates of a lower amount than the Company pays to the Consolidated Group. The Company asserted that a contributing factor to its being unable to achieve its authorized rate of return and ROE is because it reflects an expense equal to the 35%, paid to its affiliates, as Federal Income Tax on its books. The difference between this expense recorded on the Company books and the lesser amount recovered in rates (based on an "effective tax rate"), deprives the Company of its ability to achieve its authorized ROE. Company Ex. MAM-D at p. 35.

Although it objected to the application of anything less than the statutory tax rate for ratemaking purposes, the Company has reconciled itself to the Commission application of the PCLA, and for several years has filed its rate cases using this approach. Company Ex. MAM-R at pp. 53-54. In its rebuttal testimony the Company included 2007 tax data and calculated its effective tax rate based on a 5-year average presented in Company witness Miller's rebuttal testimony. In making its calculation, the Company excluded tax deductions that were taken on its Consolidated income tax return, but that the Company labeled as "Items Specifically Excluded From Rate Recovery in Orders in Case Nos. 01-1691-W-PC & 06-0597-W-PC." These deductions, which were excluded from the Company calculations from 2002 through 2007, were approximately $160 million, $124 million, $118 million, $143 million, and $90 million. The Company proposed effective tax rate using the PCLA approach, modified in the

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[7] The use of the term "parent company loss" is somewhat a misnomer because the Company includes companies other than a single parent in its "PTLA". These included companies are: American Water Works, Thames Water Aqua US Holdings, AWWSC, American Water Capital Corp, E'Town Corp, and Thames Water Holdings. See Exhibit MAM-18 at p. 1.

manner described above, was 25.79%.

In this case, there are two aspects of the Company FIT expense calculation in dispute. First, in its calculation of the PCLA, the Company removed, or adjusted out of its calculation, tax losses that were associated with certain costs that the Commission had excluded from rate recovery in prior acquisition cases. The Company referred to this issue as the "Disallowed Cost Adjustment" in its testimony and briefs. We find this term to be confusing so in this Order we will either describe the adjustment made by the Company or refer to it as the "Company Acquisition Cost Tax Adjustment." The Company asserted that certain transaction and acquisition premium costs were precluded from being included in future revenue requirements by the Commission and every other utility commission approving the acquisition. Consequently, the Company asserted that (i) customers should not be provided with the tax benefit of the tax deductions arising from those costs, and (ii) that the Commission should consider the expenses associated with the acquisition to be non-recurring in nature and thus not utilize them in the determination of the Company's FIT expense. Company Exs. MAM-D at pp. 39-42 and MAM-18 at p. 2.

The second controverted aspect of the Company FIT expense calculation relates to losses other than the traditional PCLA losses reflected in the tax returns filed by the Consolidated Group. In its FIT expense calculation, the Company did not take into account all affiliated losses that reduce the federal income tax liability of the Consolidated Group in any given year. Considering all losses, rather than just the limited parent company and service company losses, is referred to by Company as a "consolidated tax adjustment," or CTA.[8] The Company opposed the CTA and argued that in prior cases the Commission had considered a CTA calculation recommended by the CAD and declined to go beyond the PTLA.

The Staff and the CAD opposed the Company calculation of its FIT expense, with each recommending that the Company effective tax rate calculation should incorporate all losses of the Consolidated Group, including those that the Company maintained should be removed from consideration because they represent costs that were specifically excluded from any consideration of rate recovery in prior cases. The Staff and CAD versions of the CTA were calculated using different methods, causing their respective effective tax rate recommendations to differ as well. Their respective recommendations were dramatically lower than the Company proposals. The Company effective tax rate, reflecting the PCLA only and calculated in the manner described above, resulted in an effective tax rate of 25.79%. The Staff proposed an effective tax rate of 10.46% and the CAD proposed an effective tax rate of 6.77%.

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[8] Even the CTA calculation is not defined the same by all parties. The Staff version of the CTA includes all losses of the Consolidated Group when calculating an effective tax rate for the companies with taxable income. The CAD version of the CTA includes losses of the "parent group", as listed above and the losses of non-water utility companies participating in the consolidated tax filing. The CAD does not include losses of the operating utilities when making its calculation.

CAD witness Crane testified in support of the CAD position on the FIT expense issue. Her testimony focused primarily on the CTA, and the Company ability to "take advantage" of the tax losses experienced by other members of the American Water consolidated group. Ms. Crane asserted that "[w]ithin a consolidated income tax group, tax losses have no value unless some other entity has taxable income that can be offset by these losses." CAD Ex. 2 at p. 61. Stated differently, it is the taxable income of the Company and other operating companies that give value to the tax losses generated by other companies in the consolidated group. *Id.* at pp. 60-61, 62. Ms. Crane argued that these benefits, because they reflect actual taxes paid, should be flowed through to the benefit of the customers. To do otherwise – that is, to establish the Company revenue requirement on a stand-alone federal income tax methodology – would result in a windfall to the Company's shareholders and, consequently, in rates that are higher than necessary. *Id.* at 60.

The CAD recommended that the Commission eliminate the Company removal of the Acquisition-related costs from the PCLA calculation. A variety of reasons for including the effect of these expenses in the calculation of effective tax rates were offered by CAD witness Crane and were repeated in the CAD brief. The CAD argued that the Company position with regard to expenses not allowed for ratemaking purposes is based on the mistaken premise that consolidated income tax adjustments are an attempt to incorporate certain non-utility financial transactions into the ratemaking process. CAD further argued that including all expenses contributing to an effective tax rate recognizes the benefits accruing to each group member as a result of participating in a consolidated return. The CAD stated the following regarding the Company arguments for excluding certain expenses from the effective tax rate calculation: "The consolidated income tax adjustment only examines the impact on WVAWC of its participation in a consolidated federal income tax return. It does not address any specific transaction by either the parent company or any non-regulated entity." CAD Brief at p. p. 79.

The Staff testimony on this issue was more focused. Ms. Kellmeyer's direct testimony centered on strict adherence to the "actual taxes paid" concept that she asserted is the Commission clear preference.

Ms. Kellmeyer stated that Staff used the most recent methodology approved by the Commission in the 2007 *Mon Power* Order, computing an effective tax rate for the entire consolidated group that reflects all non-regulated affiliate losses so that ratepayers will not be required to pay taxes that are not reasonably expected to be paid to a taxing authority. Staff Ex. DLK-D at pp. 10-11, (quoting the 2007 *Mon Power* Order at p. 32). The actual taxes paid rationale was the basis for her objection to the Company proposal to exclude certain expenses from the development of an effective tax rate when those expenses had been determined to be inappropriate for ratemaking purposes by the Commission. Staff Ex. DLK-D at p. 11.

Ms. Kellmeyer stated that the effective tax rate calculation in this case is significantly different from the 2003 Rate Case. In the 2003 Rate Case the parent company losses accounted for 97% of the total losses. Thus, the losses of the other companies were insignificant. In this case, however, Ms. Kellmeyer explained that the parent company losses

only account for 55% of the losses of the consolidated group. According to Ms. Kellmeyer, "[u]nlike the 2003 WVAWC case, the exclusion of certain members of the group and/or exclusion of certain parent company cost[s] results in a significantly higher effective tax rate and will result in ratepayers paying significantly more than will be paid to a taxing authority." Staff Ex. No. DLK-D, p. 12.

The Company devoted considerable rebuttal testimony to the position of the CAD and Staff on this issue. Company witness Warren, in his rebuttal testimony, explained the general regulatory treatment of disallowed costs, described the regulatory incidence of the CTA approach, and provided criticisms of the conceptual and economic rationales offered in support of the CTA, both in general and specifically in reference to the Staff and CAD applications of it. Mr. Miller testified that, although he did not support the Commission application of a CTA in the 2007 *Mon Power* Order, in his view the basis for the Commission decision in the *Mon Power* case was a set of factual circumstances that are dissimilar to the present case.

Mr. Miller's rebuttal described the historical development of the PCLA during his thirty years with the Company, opining that the Commission application of a consolidated tax savings adjustment, at least until the 2007 *Mon Power* Order, had always been limited to capturing parent company losses – that is, was a PCLA only. Company Ex. MAM-R at pp. 53-54.

Mr. Warren's rebuttal testimony first concentrated on the regulatory treatment of disallowed costs, an analysis relevant to the Disallowed Costs Adjustment urged by the Staff and CAD. He (i) described the types of utility and affiliate costs that regulators commonly disallow for rate recovery, (ii) showed that many disallowed costs are in fact tax-deductible for federal income tax purposes, and (iii) asserted that the tax benefits associated with the deductibility of such costs are universally allocated to shareholders, not to ratepayers. Company Ex. JIW-R at pp. 6-7. Mr. Warren's rebuttal testimony discussed the conceptual basis of the CAD and Staff advocacy for the CTA – the actual taxes paid rationale. Mr. Warren sought to undermine the conceptual basis for this position, insisting that a more appropriate inquiry is the actual tax amount that is occasioned by the provision of regulated service. *Id.* at p. 21. He argued that actual taxes paid is not a particularly useful standard, showing that Ms. Crane herself proposed that the Commission deviate from the actual-taxes by not reducing ratepayer tax expense by the actual effect of incentive compensation, rate case expense, and advertising costs – all tax-deductible expenses – on the Company tax liability. *Id.* at p. 22. Similarly, Mr. Warren asserted that the concept of an effective tax rate is meaningless in practice. The fact that tax losses can offset taxable income in arriving at consolidated taxable income in no way reduces the actual tax rate; every dollar of taxable income remains taxable at 35%, and every change in revenue or expense will change the tax by 35% of that amount. The CAD 6.77% effective tax rate effectively asserts that the Company income was taxed at a 6.77% rate. Providing examples of how the concept can be manipulated, Mr. Warren asserted that a lower effective tax rate is not, in and of itself, a benefit of consolidated filing; it is merely a ratio that is driven by the ability to net taxable

income against tax losses. *Id.* at pp. 23-26.

***Commission Discussion and Decision on Consolidated Taxes***

As noted above, each of the two controverted aspects of the Company's FIT expense – the Company Acquisition Cost Tax Adjustment and the Non-Regulated Loss Adjustment (i.e., the CTA) – has a significant impact on its cost of service, with the Company Acquisition Cost Tax Adjustment being the larger of the two adjustments. The Commission will address this aspect first.

The Commission finds that the Company Acquisition Cost Tax Adjustment is inappropriate and that the Company adjustments to the PCLA calculation to remove the effects of the Acquisition-related transaction and premium costs and initial Sarbane-Oxley-related compliance costs should not be adopted by the Commission. We do not agree with the Company on this issue. We have noted in the past that our main goal in calculating a Federal (and State) Income Tax Expense in rate cases is to provide an amount in revenue requirements that can be reasonably expected to represent actual taxes that will be paid to the Federal and State taxing authorities ("actual taxes paid")[9]. When a utility joins in a consolidated tax filing, the Commission looks to the actual taxes paid by the Consolidated Group and determines an amount to include in the revenue requirement that represents the West Virginia utility's fairly allocated share of actual taxes that will be paid to the Federal and State taxing authorities. The Commission is neither attempting to allocate the expenses and tax deductions of other entities to the West Virginia utility nor attempting to ascertain which expenses and tax deductions of other entities are, or should be, assigned to West Virginia ratepayers and incorporated into West Virginia utility rates. If other members of a Consolidated Group have huge tax deductions that result in tax losses that wipe out the income tax of the group altogether, disregard of those losses to arrive at an income tax allowance for the West Virginia utility would result in the imputation of a tax expense that does not exist.

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[9] Mr. Warren referred to "actual taxes paid" as a myth. He asserted that because of the provision that must be made for taxes payable in the future (deferred taxes) the tax expense allowed for ratemaking is often different, and usually greater, than the current taxes due to be paid immediately. This argument is not valid in the context of the CTS issue. The Commission would agree with Mr. Warren that we could be more precise, and refer to "actual taxes paid" as "actual current taxes paid". Or, an "actual taxes paid" policy could be more precisely described as providing for "actual taxes paid and deferred taxes payable". The Commission believes that the meaning of "actual taxes paid" is sufficiently clear in the context of our discussion of the CTS issue and it has been used in previous cases and court decisions. The Commission does not wish to confuse the issue by modifying the phrase to acknowledge the effects of mandatory normalization requirements to provide for deferred taxes built into the tax codes or for other normalization that is chosen by the Commission from time to time to account for tax timing differences or tax credits in our ratemaking decisions.

The Commission also does not agree that the establishment of ground rules that an acquisition would be allowed as long as the costs of the acquisition were not passed to West Virginia customers renders the tax losses relating to those acquisition costs off limits to our attempt to ascertain actual taxes paid by the Consolidated Group. Quite the contrary, imputing a non-existent tax by disregarding the actual taxes paid by the Group would be requiring West Virginia customers to pay money to the Group to provide for a partial offset of the disallowed costs that were knowingly assumed by the parent company. In effect, under the guise of a tax payment to a taxing authority, it forces West Virginia ratepayers to pay for part of the costs that had been disallowed and which the entities involved in the acquisition had agreed to absorb.

The Commission recognizes that the Company explicitly or implicitly argued that the entities that knowingly accepted the responsibility for acquisition related costs, and that had agreed to hold West Virginia rate payers harmless from such costs, may have done so with the expectation that they would receive the full tax deduction for those costs, even if the deductions put them in a tax loss position. The Commission notes that this adjustment for acquisition costs would not be an issue if the acquiring entities had generated sufficient revenues to recover their acquisition costs from sources other than West Virginia water utility customers. The Commission does not find any evidence that when the acquisition conditions were established by the Commission, the acquiring entities responded to conditions imposed for the acquisition with a counter proposal saying that if they could not recover the costs in other revenue streams, they would expect an imputed income tax increment in West Virginia rates that would not have to be paid to a taxing authority so that they could receive some payments from West Virginia ratepayers to at least contribute to their recovery of acquisition costs.

With regard to the use of a CTA, the Commission has carefully reviewed all of the evidence, testimony and arguments and considered applicable state regulatory and Court decisions cited by the Company and its witnesses. The Commission does not agree that the decisions made in other States should cause us to revert to the PTLA and abandon the CTA. The Company has made it clear that the use of a CTA is by no means widespread. The Company noted that the Federal Energy Regulatory Commission abandoned the actual taxes paid concept and was upheld by a Federal Circuit Court. See, *City of Charlottesville v. Federal Energy Regulatory Comm'n*, 774 F.2d 1205 (D. C. Cir. 1985). The Commission considered those arguments and remains convinced that the use of the CTA is justified by our decision to limit utility revenue requirements to actual taxes paid to a taxing authority. We do not find that decision to be contrary to the *Charlottesville* case. We do not believe that the Charlottesville case prohibits the use of an actual taxes paid methodology. If anything, the *Charlottesville* case simply upholds the right of a Regulatory Agency to change its mind.

The Commission has previously addressed many of the court decisions and State Regulatory Commission decisions that Mr. Warren cited in his testimony in our decision in the *Mon Power* case. Much of that discussion is generic to this issue and is not dependent on the particular facts of this case. All parties in this proceeding discussed the *Mon Power* case

at length. Staff and CAD referenced our decision in that case as support for their positions on CTS in this proceeding. Any reference that we make to that case is not intended for that purpose. The Commission would not use *Mon Power* to give short shrift to the arguments made by the Company and the evidence presented by its witnesses. Likewise the Commission would not disregard compelling evidence and argument on an issue simply because it pointed toward a decision different from one made on a similar issue in another case. However, the Commission does cite the *Mon Power* case for the discussion of the same legal precedents argued by the Company in this proceeding.

As stated in the *Mon Power* decision, the Commission is not dissuaded from adopting a CTS calculation because "tax" payments are made to an affiliated group rather than a taxing authority. The Commission considers payments made to an affiliated group that exceed the current effective tax rate of the taxable income companies in the group as something other than tax payments. This concept has been upheld by the West Virginia Supreme Court. The Court recognized the difference between a "real" tax expense and an "artificial" tax expense in upholding the Commission tax savings calculation in *Virginia Elec. and Power Co. v. Public Service Comm 'n*, 161 W.Va. 423, 429, 242 S.E.2d 698, 702 (1978):

> It seems to us that there is no difference in the Commission's ruling on the point, than would be the case if the utility attempted to put into its rate base the cost of materials to repair lines, for example, at a catalogue price, where in fact the Company paid only half that price. It could not be argued that the utility's consumers should pay rates based upon an artificial price, not actually paid; and it likewise would seem reasonable that customers should not pay rates based upon a tax expense not actually paid.

The Commission also noted in the *Mon Power* decision that our decision with regard to use of a CTS was consistent with the ruling of the United States Supreme Court. In *Mon Power*, we noted the USSC analysis in *Federal Power Comm'n v. United Gas Pipe Line Co.*, 386 U.S. 237, 87 S.Ct. 1003, 18 L.Ed. 2d 18 (1967):

> Respondents insist that in making the allocation the Commission would violate the statute unless in every conceivable circumstance, including this one, United is allowed an amount for taxes equal to what it would have paid had it filed a separate return. In their view United should never share in the tax savings inherent in a consolidated return, even if on a consolidated basis system losses exceed system gains and neither the affiliated group nor any member in it has any tax liability. This is an untenable position and we reject it. Rates fixed on this basis would give the pipeline company and its stockholders not only the fair return to which they are entitled but also the full amount of an expense never in fact incurred. In such circumstances, the Commission could properly disallow the hypothetical tax expense and hold that rates based on such an unreal cost of service would not be just and reasonable.

386 U.S. at pp. 243-244.

The Commission will calculate an effective Federal Income Tax Rate in this case reflecting the effects of all tax losses on the current taxes of taxable income companies within the Consolidated Group. To make this calculation, it is necessary to consider carefully the historic consolidated income tax return data and the appropriate way to use that data to develop a reasonable effective tax rate to apply to the tax calculation in this case. The Company made its calculation based on a five-year average of the historic data (as adjusted by the Company). The Staff used a five-year average of the historic data (adjusted to remove effects of accelerated depreciation) to calculate the effective income tax rate. The CAD departed from the five-year average and suggested that a shorter and more current three-year average (as adjusted by CAD to eliminate utility loss companies) was more appropriate based on its evaluation of the historic data.

There is merit in the CAD recommendation to depart from the use of a static five-year average when the data indicates that something other than such a static average is more representative of the expected effective tax rate on a going forward basis. The Commission considered use of a shorter, more current three-year average. The Commission also considered the trend in the data and the Company argument that some of its Acquisition-related losses should be considered as non-recurring. Because the Commission will use all loss companies for a CST calculation, it is necessary to eliminate the tax effects of accelerated depreciation so as not to inadvertently flow through tax benefits of accelerated depreciation in the CST calculation. Staff adjusted the historic data to exclude the effects of accelerated depreciation, so we will use the historic data as contained in the Staff Rule 42 Exhibit. That data and the Staff's calculation of an effective tax rate is as follows:

| | | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|---|
| 1 | Total Tax Income of Taxable Income Companies | 310401 | 318122 | 316368 | 332637 | 318859 |
| 2 | Total Tax Losses of Loss Companies | 268467 | 208394 | 212581 | 268495 | 161451 |
| 3 | Consolidated Taxable Income (Line 1 - Line 2) | 41934 | 109728 | 103787 | 64142 | 157408 |
| 4 | FIT - Companies With Taxable Income (Line 1 x .35) | 108,640 | 111,343 | 110,729 | 116,423 | 111,601 |
| 5 | FIT - Consolidated Taxable Income (Line 3 x .35) | 14,677 | 38,405 | 36,325 | 22,450 | 55,093 |
| 6 | Tax Savings (Line 4 - Line 4) | 93,963 | 72,938 | 74,403 | 93,973 | 56,508 |
| 7 | Percentage Tax Savings (Line 6 / Line 4) | 86.5% | 65.5% | 67.2% | 80.7% | 50.6% |
| 8 | Effective Income Tax Rate (Line 5 / Line 1) | 4.7% | 12.1% | 11.5% | 6.7% | 17.3% |
| 9 | Five Year Average Effective Tax Rate | | | | | 10.5% |
| 10 | Three Year Average Effective Tax Rate | | | 9.4% | 10.1% | 11.8% |

This data shows a clear trend of decreasing tax losses and an increasing effective income tax rate. In consideration of the trends shown by this data and the evaluations of the data by the Company and the CAD, the Commission will not adopt the Staff recommended five-year average effective tax rate of 10.5%. Neither will the Commission adopt the more current three-year average recommended by the CAD. The Commission finds that either of

these averages is too low considering the clear trends in the data. The Commission finds that it would be more appropriate to consider the trend of the effective tax rate over the five year period. The trend line equation derived from the 5-year effective income tax rates on line 8 above shows a clear upward slope and can be used to calculate an effective income tax rate for 2008, 2009 and 2010. Because 2009 and 2010 will include the first full year that rates in this case go into effect, the Commission will use the trended results for 2009 and 2010 for determining the effective income tax rate. The results of that calculation are effective tax rate values for 2009 and 2010 of 18.4% and 20.4%. The Commission finds that it is reasonable to rely on this trend in lieu of the Company argument that the Commission consider some of the losses as non-recurring or moving to a shorter averaging period or a more recent effective tax rate. The Commission finds that the effective Federal Income Tax rate that is reasonable to be used in this case is the average effective tax rate of the 2009 and 2010 trended results, 19.4%.

**Deferred State and Federal Taxes**

As Ms. Kellmeyer noted in her rebuttal testimony, the Company computed deferred federal income tax on the going level additional depreciation on post-1980 property and then incorrectly added to the result the per books adjusted deferred income tax. Similarly, the Company also computed deferred state income tax on going-level depreciation on taxable contributed property and then incorrectly added to that result the per books adjusted deferred state income tax. Staff Ex. DLK-R at p. 2. The Staff made adjustments to correct these errors, and the Company did not object to the Staff's proposed adjustments. Because the deferred state and federal income tax expense calculations are dependent on other expense and revenue calculations, it is necessary to decrease the Company deferred federal income tax by $367,337 and deferred state income tax by $343,066.

**ADEQUACY OF RULE 42 FILING**

Staff witness, Kellmeyer, recommended that the Company should be put on notice that it had not complied with the Rule 42 Exhibit, Statement G requirements regarding the level of detail required in presenting and explaining expense adjustments.

The Company disagreed with Ms. Kellmeyer. Mr. Miller testified, on rebuttal:

> I very much disagree with Ms. Kellmeyer's contention. We provided over 400 pages of detailed working papers supporting those adjustments, and a great deal of additional information on CD. This information included very detailed analysis of the adjustments.

Company Ex. MAM-R at p. 7. The Commission has no doubt that the Company believes that the mass of workpapers that it makes available, the supporting electronic media, its responses to data requests and its cooperation with Staff and CAD during their review of a rate filing provides significant and satisfactory information. Nevertheless, much, if not most, of that

information does not find its way directly into the record, and we have found it difficult to consider the various adjustments made by the Company, to compare those adjustments to recommendations made by the CAD and Staff and to derive alternative adjustments based on our determinations on individual issues. Full compliance with the requirements of Rule 42 Exhibit would have greatly reduced the difficulties which we encountered in this case. We take this opportunity to clarify what we expect in Rule 42 Exhibit filings.

We first note that Rule 42 allows a utility to make adjustments to its test year data. The Rule further provides that such adjustments must be fully explained. The purpose of this rule is to allow the Commission to fully understand the reason, basis, and derivation of each and every adjustment to its test year rate base, revenues, expenses, taxes and other revenue requirement components. The Commission expects to derive that understanding from the filed Rule 42 Exhibit. It might be reasonable for a party to file the workpapers with the Commission, and incorporate those workpapers by reference into the Rule 42 Exhibit. In any event, while a more in depth analysis of the underlying data may be available in hundreds of pages of workpapers or in large volumes of electronic data, the Commission should not be required to wade through that data to understand the adjustments made by the Company or to consider alternative adjustments. The Rule 42 Exhibit must be a full and complete road map to the workpapers and electronic data that support these adjustments.

We have already discussed in this Order a number of "unexplained adjustments" contained in the Company's Rule 42 Exhibit, Rate base adjustments to accounts such as Materials and Supplies Inventory, Prepayments, Deferred Income Taxes, and Other Deferred Debits are not even given an adjustment number and do not appear at all in Statement G, where all adjustments are supposed to be presented and explained. In the case of these adjustments, we are able to recognize what the Company is doing by reviewing the supporting Schedules within the Rule 42 Exhibit. However, we get no indication of why the Company is making these adjustments.

Another example of the difficulty that the Commission encountered in this case relates to adjustments made by the Company that incorporate a number of different components. Rule 42 specifies:

> Grouping of two or more adjustments into a single net adjustment will not be permitted. The detail of adjustments must include the account number(s) and the book amount(s) to which the proposed adjustments relate.

150 C.S.R. 2-19.9. There are many instances throughout the Company's Rule 42 Exhibit where adjustments are grouped into a single net adjustment. For example, the Company's going level adjustment number 1, as described in Statement G, is the model of brevity. The adjustment shows increases (or decreases) to individual revenue accounts with the explanation:

"To Adjust Test Year Revenues Based Upon Billings Per Statement D."

When we turn to the Statement D Bill Analysis, we note that the changes in Revenue that are very briefly summarized on Statement G are caused by two major differences between test year data and going level data. First, the going level rates are different from the per books rates. Second, the billing units at going level are different from the per books billing units. In effect, the Company has made two adjustments to go from per books to going level revenue. One based on its adjustment of billing units and the second based on a change in rates. However, there is no indication of the value of each adjustment in the explanation of the adjustment on either Statement G or Statement D. We consider this to be an improper grouping of two or more adjustments into a single net adjustment. As a matter of fact, further review of Statement D indicates even more changes between per books and going level revenue. Local B&O taxes are included in per books revenue but excluded from going level revenue; unbilled revenue are included in per books revenue but excluded from going level revenue; and corrections and allowances are different at going level than the per books values. Thus, in addition to an adjustment to reflect different rates, and an adjustment to reflect different billing units, going level revenues are different from per books revenue due to three additional adjustments. Yet, Statement G, which is supposed to fully detail, quantify and explain each adjustment contains but a single number for each revenue account and the above quoted "explanation."

We have addressed the Company's labor adjustment at great lengths in this Order. We have noted that the Company adjusted labor for additional employees, to annualize pay increases granted during the test year, to reflect contracted pay increases to be given union employees after the test year, to reflect pay increases for non-union hourly employees to be given after the end of the test year, to provide for pay increases to salaried employees to be given after the end of the test year, to eliminate payroll for employees that left the Company during the test year, and to annualize payroll for employees that were not on the payroll for the full test year. There are clearly multiple adjustments to payroll reflected in the Company's proposed going level payroll costs. Yet, on Statement G, all of these adjustments are combined into a single net adjustment for each functional expense category which is contrary to the clear instructions contained in Rule 42. Furthermore, Statement G provides no explanation to indicate that there are multiple changes affecting going level payroll, and no calculation or reference to a separately filed calculations of payroll costs; although such information and detail is required by Rule 42. The Commission notes that this lack of detail, and combining of multiple adjustments into a single adjustment made it difficult for us to consider the various iterations for calculating a reasonable going level payroll presented by the parties in this proceeding.

There are more examples of multiple adjustments being combined into single adjustments and more examples of explanations of adjustments that are so abbreviated that they are really worthless. We will not belabor this point. The Commission recognizes that the task of putting together the financial data for a rate case can be daunting. The Company should recognize, however, that the sketchy explanations, combining of adjustments and lack of detailed calculations make the Commission's task of deciding contested issues and then applying its decisions to the revenue and expense units contained within the Company's

financial data even more daunting.

Rule 42 is not intended to be a "make work" set of directions. The consistency of presentation and level of detail that is necessary for the Commission to efficiently review, evaluate, adjust and finalize the revenue requirements that it must establish in each rate case has been carefully considered and built into the filing requirements of Rule 42. The Company should consider the detail that is required to adjudicate its adjustments and to make alternative adjustments when the evidence indicates that such adjustments are necessary. We believe that the Company will realize that full compliance with Rule 42, which it has not done in this case, will provide the necessary detail.

## COMPANY MOTION FOR PROTECTIVE ORDER

On September 30, 2008, the Company filed a Motion for Protective Order, seeking protective treatment of information filed as part of its initial filing, supporting work papers, and in response to Staff and CAD and approval of protective agreements with those parties receiving the information through data responses.

On October 24, 2008, the Commission approved protective agreements submitted by the Company, but deferred ruling on whether the information was confidential.

On December 5, 2008, the Company filed its Amended and Restated Motion for Protective Order seeking permanent protective treatment for certain items filed in the case. According to the Company, the information filed under seal contained confidential and proprietary materials relating to: (i) internal audits, (ii) personal salary and benefit data, (iii) union wage rates, and (iv) sensitive product supplier information. The Company asserted that the disclosure of this information would put it at a competitive disadvantage.

The Commission concludes that it is not necessary to decide the issue at present. The information for which protective treatment is sought was not submitted for filing as part of the case of any party. Additionally, no entity has requested the Commission provide copies of the information for which protective treatment is sought. The Commission will continue to segregate and keep filed under seal the sensitive documents until such future time, if any, that the Commission receives a Freedom of Information Act request for the documents. Upon such filing the Commission will notify the Company and provide it with an opportunity to argue whether such documents should be given permanent protective treatment.

## FINDINGS OF FACT

*RATE OF RETURN*

1. On November 25, 2008, the Company obtained long term debt note with AWWC in the amount of $37 million, at a rate of 10%. Company Ex. MAM-11.

2. Because the Company presented little information in the record, the Commission had a limited opportunity to investigate and analyze the reasonableness of the November 2008 loan obtained from AWCC.

3. Short term rates are in a state of flux because of an unprecedented financial and economic crisis felt not only in the United States, but also throughout the world.

4. The Commission will adopt a cost rate of 8.65% for preferred equity.

5. Although Dr. Vilbert argued that the Commission should rely on the natural gas company sample group, the Commission notes that the results of the various analyses for that group are lower than for the water group.

6. In the past, the Commission has expressed a preference for the short term T-Bill rate as a risk free component.

*RATE BASE*
*Terminal Treatment*

7. The Company's calculated adjustment to reflect year end treatment of additions in mains, meters, services and hydrants equaled $4,051,342. Company Ex. 3, (Rate Base Workpapers - "A" page 78 of 129). Company Exhibit 3, (Rate Base - A at p. 78 of 129), and JLW-R at p. 16, (referencing CAD data request 3-B-13).

8. The Company adjustment for terminal or post-test year rate base treatment includes plant additions such as pump station structures, booster pumps, electrical panels, treatment plant structures, treatment plant chemical feed equipment, computer equipment, transportation equipment, tools and other work equipment, and telemetry and other communication equipment.

9. The CAD recommended an adjustment to chemical and power expenses to reflect a NRW level of 20%. CAD Ex. 2 at pp. 48-49.

*Working Capital Allowance (Lead/Lag)*

10. The Company continues to use the results of a 2002 lead/lag study. The revenue lag from that study was 45.23 days reflecting a service median of 14.54 days, a billing lag of 1.5 days, and a payment lag of 29.19 days. Company Ex. MAM-D at 68-69.

*Rate Base Reduction for OPEBs*

11. The Company funded its OPEB liabilities to a greater extent than amounts allowed in rates. Company Ex. MAM-19, and Tr. IV at pp. 254-255.

*Materials and Supplies, Prepayments and Accumulated Deferred Investment Tax Credit and Other Deferred Debits*

12. The balance of Materials and Supplies Inventory was $1.3 million at the beginning of 2007 and $1.4 million at the end of 2007. Company Ex. 2-R (Revised Rule 42) Statement B at p. 14 and Schedule 5.

13. The average monthly balance of Materials and Supplies Inventory reported by the Company in its Rule 42 exhibit equaled 1.7 million. Company Ex. 2-R (Revised Rule 42) Statement B at p. 14 and Schedule 5.

14. Prepayments were $2.8 million at the beginning of 2007 and $850,000 at the end of the year. Company Ex. 2-R (Revised Rule 42) at Statement F. The average monthly balance for the year was $803,000.

15. Deferred income taxes, in total, declined from approximately $82 million at the beginning of 2007 to $81 million at the end of 2007. Company Ex. 2-R (Revised Rule 42) at Statement F.

16. The Company made unexplained adjustments from the average test year balances for Deferred Investment Tax Credits and Other Deferred Debits.

*Contribution in Aid of Construction / Acquisition Adjustment*

17. The Staff treatment of negative acquisition adjustments as rate base reductions was approved by the Commission in the 2003 Rate Case. Staff Ex. No. DLK-D at p. 16.

*Account 391 – Thirteen Month Average Balance*

18. The Company Revised Rule 42 overstated its average monthly balance for account 391 by $27,549. JLW-R at p. 16, and Tr. Vol. IV at p. 142.

*OPERATION AND MAINTENANCE AND OTHER EXPENSES*
*Chemical Costs*

19. AWWC, on behalf of the Company (and other AWWC subsidiaries) agreed to new chemical pricing schedules for 2009 with all eleven of its expected suppliers. Company Ex. WDM-R at p. 17.

20. AWWC entered into Master Service Agreements (or addenda to existing Master Service Agreements) with six of its eleven suppliers. Company Ex. WDM-R at p. 17.

21. The Company has binding agreements with the remaining five vendors as to price and is working to finalize terms and conditions of the Master Service Agreements with

those entities. Company Ex. WDM-R at p. 17.

22. There was no evidence presented to the Commission that any chemicals could be obtained at a lower costs than those obtained by the Company for 2009. Tr. IV at pp. 233-234.

*Gasoline Expense*

23. The cost of gasoline is highly volatile and subject to dramatic increases and decreases in price.

*Group Life and Medical Expense*

24. The Company agreed with Staff going-level adjustments related to the reimbursement rates used by the Company for life insurance, disability insurance, and health care premiums. Company Ex. No. JLW-R at p. 15.

*Payroll*

25. The Company requested a going level payroll based on 321 employees, an increase of twelve employees over the 2007 test year. Company Ex. WDM-D at p. 29.

26. The Company provides pay increases to its non-union hourly employees commensurate with the pay increases it provides to its union employees. Tr. IV at pp. 164-165 (Ware).

27. In the 1994 and 2003 Rate Cases the Commission granted the Company request for non-union hourly wage increases commensurate with the contractually required union raises. *See*, 1994 and 2003 Rate Case Orders.

28. Incentive programs such as the AIP are a part of most public utility compensation packages. Company Ex. MAM-R at p. 84.

29. The Company used a labor expense rate of 71.88% based on the test year data and applied a higher labor expense rate to its going level payroll adjustment. Company Ex. JLW-R at p. 7.

30. Staff stated that (i) test year cash wages include 2006 wages paid in 2007, but did not include 2007 wages paid in 2008, and (ii) that the Company added $440,642 in incentive pay, but expensed only $250,961. Staff Ex. DLK-D at p. 6.

31. Staff computed the labor expense percentage by comparing wages expensed during the test year with total wages, with a resulting labor expense rate of 70.72%. Staff Ex. DLK-D at p. 6.

*Postage*

32. The Company made a $48,067 adjustment to reflect the increase in postage rates effective. Company Ex. No. JLW-D at p. 12.

33. Although the Company was unable to specifically categorize 6% of postage expenses to determine the exact increase to be applied, the record shows that these were appropriate expenses during the test year for the Company. Company Ex. JLW-R at 11-12.

*Rate Case Expense*

34. Neither the CAD nor Staff opposes the Company estimate of the rate case expense that will ultimately be incurred to prepare and litigate the current (2008) rate case. *See*, generally, Staff Ex. DLK-D at pp. 8-9, and CAD Ex. 2 at pp. 51-52.

*Relocation Costs*

35. The Company incurred $137,837 in relocation expenses during the test year. Company Ex. JLW-R at p. 19.

*Tank Painting*

36. Staff and the Company agreed that an error occurred and that (i) tank painting expense for 2005 should be $750,643 instead of $1,082,208, and (ii) the amortization of tank painting expense should be reduced to $333,255 from $358,336. Company Ex. JLW-R at pp. 17-18, and Staff Ex. DLK-D at p. 6.

*T&D Mains (Paving Costs)*

37. The Company renegotiated paving contracts with its contractors resulting in an increase in paving costs. Company Ex. JLW-D at p. 16.

*Uncollectible Accounts*

38. The Company uncollectibles adjustment is based on an average uncollectible rate of 1.555%, applied to the Company going-level revenue claim of $119,265,598, resulting in the going-level uncollectible expense claim of $1,854,580. CAD Ex. No. 2 at pp. 25-27.

*Waste Disposal*

39. None of the waste disposal costs of $23,362 identified in the Company's Rule 42 Exhibit were incurred during the test year nor were any of the 2008 costs incurred as of the date of the evidentiary hearing. Furthermore, the Company agreed that Ex. JLW-2 shows that none of the costs will occur until January 2009, and some as late as the summer of 2009. Tr.

IV at pp. 128-133.

*REVENUE ISSUES*
*Declining residential sales adjustment*

40. The Company has been experiencing a decline in average usage per residential customer and presented evidence supporting a proposed reduction in residential usage of 68.5 million gallons below the test year level. Company Ex. JLW-D at p. 6; Company Ex. MAM-D at pp. 42-43.

*Deferred State and Federal Taxes*

41. The Company incorrectly computed both its deferred federal income tax and deferred state income tax. Staff Ex. No. DLK-R at p. 2.

42. The Company admitted that the deferred federal and state income tax included in its income tax calculations should be corrected. Staff Ex. DLK-R at 2.

*COMPANY MOTION FOR PROTECTIVE ORDER*

43. The Water Company has an outstanding Amended and Restated Motion for Protective Order. Company December 5, 2008, Amended and Restated Motion for Protective Order.

## CONCLUSIONS OF LAW

*RATE OF RETURN*

1. The determination of an appropriate cost of common equity for a utility must rest principally with the best judgement of the Commission. *See, The Potomac Edison Company*, Case No. 79-230-E-42T, (Interim Order, November 21, 1979) at p. 7; *Virginia Electric and Power Company*, Case No. 79-040-E-42T, 67 ARPSCWV 277 (Final Order, February 1, 1980); *Monongahela Power Company*, Case No. 80-058-E-42T, (Interim Order, July 18, 1980) at p. 8; *Monongahela Power Company*, Case 90-504-E-42T (Commission Order, June 11, 1991) at p. 24; *GTE South, Inc.*, Case No. 90-522-T-42T (Commission Order, May 31, 1991) at p. 17; *Appalachian Power Company*, Case 91-026-E-42T (Commission Order, November 1, 1991) at p. 4; and, *Mountaineer Gas Company*, Case No. 93-0005-G-42T (Commission Order, October 29, 1993) at p. 9.

2. The capital structure recommended by CAD is consistent with the Commission historic practice of using the most recent actual data available. It is reasonable to adopt the CAD proposed capital structure percentages for purposes of calculating an overall cost of capital in this case.

3. The cost of preferred equity is largely a matter of contract

4. There is little difference among cost of preferred equity recommendations.

5. Because the $37 million debt is in place and is an obligation of the Company, the Commission will allow the 10% interest rate on the $37 million to be reflected in the cost of long term debt in this case. In making this decision, the Commission is not making a determination that the terms and conditions of the note in question are reasonable.

6. The CAD recommended a short term interest rate above the 2% rate recommended by Staff and below the 3.96% rate projected by the Company. While the Staff rate may be on the low side, the evidence supports a conclusion that the Company rate is on the high side, and it is reasonable to use the average of the three recommendations of 3.15% as the cost of short term debt.

7. Utility rates should allow a public utility the opportunity to earn a level of revenues sufficient to attract capital in the competitive money market, balanced with the interests of the consuming public in receiving fair and reasonable rates. *Bluefield Water Works and Improvement Company v. Public Service Commission*, 320 U.S. 679 (1923); *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 64 S.Ct. 281 (1944); *Permian Basin Area Rate Cases*, 390 U.S. 747, 88 S.Ct. 1344 (1968); *Monongahela Power Company v. Public Service Commission*, 276 S.E.2d 179 (W. Va. 1981).

8. Because the Commission can assess the data in relation to the financial market disruptions taking place, the properly evaluated DCF results are not less reliable than the results of other methods of evaluation of investor expectations.

9. Adjusting DCF and CAPM rate of return recommendations upward based on an assumption that the financial risk of lower common equity ratios can or should be reduced to a mathematical formula to increase the return on equity derived from comparable business risk companies is not reasonable.

10. The Company's equity ratio is neither unusual nor extraordinary, and the Commission does not agree that financial risk within a range of normal equity ratios can be quantified with the mathematical precision that Dr. Vilbert's approach would imply.

11. To avoid additional complications of assessing business risk differences, the Commission has expressed a preference for not using companies other than comparable utility companies offering similar service for DCF and CAPM calculations. *See, e.g.*, 2003 Rate Case Order at p. 41.

12. Although the Company witness asserted that the Commission should rely on the natural gas companies results, which produce a lower ROE, the Commission believes it is reasonable to consider the results of the natural gas group, but to focus primarily on the water

utility sample group.

13. The country is facing an unprecedented economic and financial crises that renders significant unexpected results in some of the measures of cost of capital that the Commission has used in the past, including the use of the short-term T-Bill rate for the risk free component of a CAPM calculation.

14. It is reasonable to consider various combinations of cost of capital components in this case as compared to components discounted, or rejected, in the past.

15. Upon analyses of the data, (i) allowing for Dr. Vilbert's exclusion of companies that he believes have an unreasonably low DCF or CAPM result, (ii) considering the use of Dr. Vilbert's natural gas company sample group, and (iii) considering the results of a CAPM analysis that uses a long term risk free rate, the average results of Dr. Vilbert's data for the water group DCF, and natural gas group DCF are 10.1% and 9.15% respectively. The average results for Dr. Vilbert's water group CAPM, and natural gas group CAPM are 10% and 8.8% respectively.

16. The Commission believes the traditional CAPM analysis used in the past is reasonable, but does not disregard Dr. Vilbert's ECAPM analyses. The Commission notes that the range of results for the water company sample and the natural gas company would move upward by between 10 and 70 basis points.

17. It is reasonable in this case to place less weight on historic growth rate data used by the CAD cost of capital witness because of the inclusion of negative growth rates and the low average values that result from the historic averages.

18. Giving more weight to the projected growth rates in Mr. Short's data the Commission finds that a growth rate between 5.7% and 8.7% is more reasonable than Mr. Short's range of 5.25% to 5.75%. The midpoint of this range is 7.2%, which when added to Mr. Short's DCF yield component of 3.15% produces a ROE result of 10.35%.

19. Using the arithmetic mean market risk premium in Mr. Short's CAPM calculations, and considering both the short term T-Bill rate and longer term Treasury Bond rate for the risk free component, the Commission arrives at a range of 9.0% to 9.6% for a CAPM based ROE from Mr. Short's data.

20. Mr. Kaz calculated an average CAPM-based ROE of 8.97%, including companies in his sample group whose indicated ROE results would not produce an interest coverage equal to 2.0 times.

21. Mr. Kaz's CAPM data supports a calculated ROE of 9.9%.

22. The Commission determines that an ROE of 10% is reasonable based on the

Commission's analysis of the data presented by the cost of capital witnesses.

23. The Commission has determined that a 10% ROE will result in an interest coverage of approximately 2.3 times. While such an interest coverage might not be appropriate for triple A rated debt, it is reasonable for the Company under the circumstances of this case.

*RATE BASE*
*Terminal Treatment*

24. The volume of T&D delivery plant operated by the Company, the age of that plant, and the necessity to replace aging T&D delivery plant regardless of customer growth, or lack thereof, is a major problem for the Company if it must face a lag of two rate cases before the full revenue requirement of such plant replacement is reflected in rates.

25. Replacement of existing T&D delivery plant that is not associated with significant customer or usage growth meets the criteria for year end rate base treatment.

26. An adjustment to the Company average test year rate base in the amount of $4,051,342 to reflect year-end treatment of T&D delivery plant is reasonable.

27. Test year additions and replacements to accounts other than mains, services, meters, and hydrants should be held to a higher standard of proof and should require some analysis explaining that these additions and replacements are not revenue producing and would have not more than minimally reduced test year expenses if the additions had been in service for the entire year.

28. Without additional credible evidence, this listing of plant additions that do not fall within the T&D delivery plant categories are not obviously non-expense reducing, and year end treatment of these plant additions would not be reasonable absent a more detailed showing by the Company that they would not have resulted in more than minimal expense reductions during the test year if they had been in place for the entire test year.

29. It is not reasonable for the Commission to allow a $4 million rate base adjustment in this case in anticipation of future incremental investment to replace water lines.

30. The Commission does not find sufficient justification regarding the costs and benefits of remedial procedures for reducing NRW to make an adjustment in this case to reduce expenses to reflect a lower level of UFW as proposed by the CAD.

*Working Capital Allowance (Lead/Lag)*

31. The Company's tariff delayed payment penalty is not intended to compensate the Company for the carrying cost of customers that take more than 20 days to pay their bills.

32. The Company receives no additional revenues or profits because of the delayed payment penalty, although the penalty may have some impact on the rate of uncollectables or the revenue lag of the Company. Company Exs. MAM-R at p. 71, Tr. I at pp. 94-96.

33. The evidence does not support an assumption that bills are now being paid, on average, within twenty days.

*AWWSC Adjustment to Cash Working Capital*

34. The CAD recommended adjustment to cash working capital for Company payments to the AWWSC does not require action on the part of the Company that violate its agreement with AWWSC.

35. While WVAWC should not act unreasonably in making payments to AWWSC, a lag comparable with its own payroll lags does not appear to be unreasonable, while an advance payment does appear to be unreasonable.

*Rate Base Reduction for OPEBs*

36. The Commission allowances for OPEBs are different from the allowances calculated under FAS 106, and the amounts capitalized by the Company should reflect the Commission authorized OPEB allowances.

37. It is reasonable for the Company to match its plant accounting for ratemaking purposes with the Commission ratemaking treatment of OPEBs.

*Materials and Supplies, Prepayments and Accumulated Deferred Investment Tax Credit and Other Deferred Debits*

38. The Commission has no indication that the downward trend in prepayments experienced in 2007 is influenced by an unusual level of prepayments that will not be repeated, nor is there any indication that some portion of the high prepayment balance during the year was duplicated in the Company lead/lag study calculation of cash working capital.

39. There is not sufficient analysis or detail provided by either the Staff or the Company with respect to Materials and Supplies, Prepayments, Deferred Income Taxes, and other Deferred Debts. Under these circumstances, it is reasonable to adopt the adjustment proposed by the Company because it results in the lower cost of service.

*Contribution in Aid of Construction / Acquisition Adjustment*

40. It is reasonable to treat the negative Acquisition Adjustment as a Contribution in Aid of Construction.

*Depreciation Expense*

41. It is reasonable to adjust the Company's proposed test year Depreciation Expense to reflect the depreciable plant adjustments made by the Commission.

*Account 391 – Thirteen Month Average Balance*

42. It is necessary to correct the error in account 391 by reducing the average monthly balance by $27,549.

*OPERATION AND MAINTENANCE AND OTHER EXPENSES*
*Chemical Costs*

43. AWWC reasonably procured chemicals for its subsidiaries in July 2008 for 2009.

44. The evidence does not support the Staff claim that the price of chemicals has fallen as the price of petroleum has fallen.

45. The Company executed addenda to Master Service Agreements with six of its eleven suppliers and presented evidence that it has contractually binding bid sheets with the remaining 5 suppliers.

46. The costs of chemicals as included in the 2009 addenda and bid sheets are a known and measurable estimate of the Company chemical expenses and it is reasonable to include those costs in the Company's cost of service calculation for purposes of this case.

47. Although the price of petroleum has declined since July 2008, there is no basis in the record to suggest that the price of chemicals has declined since July 2008 or that all of the Company chemical costs will be materially affected by changes in petroleum prices.

48. The Company was not imprudent in completing its bidding process in July 2008 nor should it now be required to opt out of the AWWC contracts for chemicals.

*Gasoline Expense*

49. It is reasonable for the Commission to adjust the Company's requested level of transportation fuel expenses downward by $189,326 based on the current price of regular, premium and super premium gasoline, of $2.027, $2.119, and $2.225 per gallon, respectively and $2.275 per gallon for diesel fuel.

*Fines and Penalties*

50. The adjustments to eliminate the fines and penalties expense in the amount of $33,955 as proposed by the CAD and accepted by the Company is reasonable.

*Group Life and Medical Expense*

51. The Staff adjustments to the reimbursement rates for life insurance, disability insurance, and health care premiums are reasonable.

*AWWSC Management Fees*

52. While it may be reasonable to provide for known and measurable payroll increases of AWWSC that will be charged to the Company under the agreement with the AWWSC, the Company has not properly documented all of those pay increases.

53. It is not reasonable at this time to direct the Company to conduct a further investigation of the management fees the Company has paid to AWWSC.

54. While it is likely that there will be some increase in AWWSC payroll-related charges, the entire amount requested by the Company is not supported, and it is reasonable to allow 50% of the Company's adjustment for the AWWSC payroll.

55. It is reasonable to allow AWWSC pension expenses based on FAS 87. The evidence supports an offsetting adjustment of $100,000 to reflect amortization of the regulatory asset to avoid an unfair and unwarranted write-off on the Company books.

56. There has been no duplication of the AWWSC pension expenses in test year management fees, and the evidence does not support adopting the pension-related adjustment recommended by the CAD.

57. It is reasonable to apply the same treatment of AIP to the AWWSC as the Commission applied to the Company's direct employees.

*Advertising*

58. The CAD has shown that some of the Company advertisements are promotional in nature, but did not provide convincing evidence that all advertisement the Company propagated is promotional in nature and devoid of any value to the customers of the Company.

59. Based on the evidence it is reasonable to reduce the Company requested advertising expense by $54,200.

*Payroll*

60. The Company provided sufficient evidence to support an employee level of 321 as reflected in its payroll adjustments.

61. The evidence shows that the vacancy rates the Company has experienced since 2005 are not likely to be representative of the Company's situation in the immediate future.

62. Company arguments in opposition to the CAD vacancy rate adjustment provide support for the Commission to refuse to adopt the Staff proposed disallowance of the Company's annualization of test year employee levels.

63. The evidence supports a 3% increase in 2008 and 2009 for both union and non-union hourly employees.

64. Considering the current economic circumstances facing the Company's customers, it is unreasonable to require customers to pay for 2009 salary increases that had not been granted as of the date of the hearing in this case.

65. The AIP enables the Company to recruit, retain, and motivate highly qualified employees. Company Ex. MAM-R at p. 84.

66. The Staff's recommended adjustment to reflect a labor expense rate of 70.72% and to adjust the Company's proposed going level payroll adjustment according was not disputed by the Company and is reasonable.

*Postage*

67. The increase applied by the Company to test year postage costs based on the increases made by the USPS in May of 2008 are sufficiently known and measurable, and will be adopted as reasonable.

*Rate Case Expense*

68. The Commission has not historically provided for a specific deferral and amortization of rate case expense. *See, Monongahela Power Company and The Potomac Edison Company, both dba Allegheny Power*, Case Nos. 06-0960-E-42T and 06-1426-E-D (Commission Order, May 22, 2008).

69. Because the Company costs and expenses are recovered without interest or other compensation, allowing 50% of the current rate case expense as a part of the requirements in this case, as the Company proposes, is reasonable. This ratemaking treatment is to allow a reasonable amount for Regulatory Commission Expenses in rates on a going-forward basis, and is not intended to reflect an authorization for deferral of current rate case expenses and

an amortization of the deferred amount over some number of years.

*Relocation Costs*

70. Relocation costs can vary significantly from year to year and it is reasonable to use a three-year average to mitigate year-to-year fluctuations and provide an appropriate estimate of the level of costs likely to be incurred in the rate year.

*Tank Access Road Maintenance and Security Costs*

71. The $250,000 for miscellaneous expenses (tank access road and security) is not known and measurable and should be rejected.

*T&D Mains (Paving Costs)*

72. The paving costs are sufficiently known and measurable, and thus the post-test year adjustment will be adopted.

*Uncollectible Accounts*

73. The evidence presented in this case does not support the Commission deviating from its historical use of a three-year average to determine the uncollectibles rate. The Commission will reject the CAD proposed adjustment, and approve the Company proposed uncollectibles rate of 1.555% as reasonable for this case.

*Waste Disposal*

74. The Company proposed waste disposal adjustment is not know and measurable and will be rejected.

*REVENUE ISSUES*
*Declining residential sales adjustment*

75. The Commission does not believe it is reasonable at this time to depart from its prior practice of not allowing a revenue reduction for possible declining residential sales under the totality of the evidence and the Commission will not adopt the Company proposed revenue reduction.

*Local B&O Tax Adjustment*

76. No material changes have occurred with respect to the collection and remittance of municipal B&O Taxes that would necessitate a change in the rate making treatment of municipal B&O tax revenue and expenses adopted in the 2003 Rate Case Order.

77. While the Staff adjustment eliminates any mismatch between the booked municipal B&O tax expense and booked tax surcharge revenue, it would be unreasonable to include booked levels of municipal B&O Taxes and tax surcharge revenue in rate cases where the Company's revenues exceed its expenses, but then exclude both revenues and expenses from the test year when expenses exceed revenues.

*TAXES (CONSOLIDATED TAX ISSUE)*

78. The consolidated tax issue is complex and does not lend itself to being summarized. The effective Federal Income Tax of 19.4%, the mid-point effective tax rate of the 2009 and 2010 trended results, is reasonable for the reasons detailed in the Discussion of this Order at pages 62 to 70.

*Deferred State and Federal Taxes*

79. To correct the Company's error in calculating deferred income taxes, it is reasonable to adopt the deferred federal and state income tax calculation as recommended by Staff.

*COMPANY MOTION FOR PROTECTIVE ORDER*

80. The Commission will segregate the sensitive documents until such future time, if any, that the Commission receives a FOIA request for the documents, at which time it will notify the Company of any such FOIA request.

## ORDER

IT IS THEREFORE ORDERED that the cost of service, attached here to as Appendix A, setting forth the revenue requirement approved herein, be, and it hereby is, adopted and established as the cost of service and revenue requirement approved in these proceedings, for West Virginia-American Water Company, for providing water utility service to its customers in West Virginia.

IT IS FURTHER ORDERED that the rates attached as Appendix B, be and are hereby approved to become effective for all service rendered by West Virginia-American Water Company on and after March 26, 2009. West Virginia-American Water Company shall file an original and six copies of its revised tariff sheets setting forth the rates, charges, rate design, and tariff decisions reflected therein and approved previously in this order within ten days of this Order.

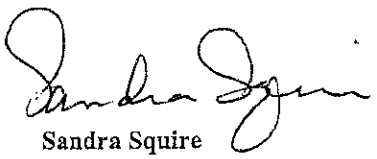
IT IS FURTHER ORDERED that the WVAWC Amended and Restated Motion for Protective Order is resolved as herein provided.

IT IS FURTHER ORDERED that upon entry hereof, Case No. 08-0900-W-42T shall

be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Commission Executive Secretary shall serve a copy of this order on all parties of record by First Class United States Mail, and upon Commission Staff by Hand Delivery.

**A True Copy, Teste:**



**Sandra Squire**
**Executive Secretary**

JJW/slc
080900ce.wpd

**Appendix A**

## WEST VIRGINIA AMERICAN WATER COMPANY
## AUTHORIZED TARIFF

| | Commission Adjusted Revenue Requirement Components |
|---|---|
| | (000) $ |
| Going Level Revenue per Company filing | 119,266 |
| Commission Adjustments: | |
| To disallow Company adjustment to reduce going level billing units | 595 |
| To reflect additional delayed payment penalties on Commission adjustment - at 2.0263% | 12 |
| Total Commission adjusted Going Level Revenue | 119,873 |
| Going Level O&M Expenses per Company filing | 59,345 |
| Commission Adjustments: | |
| To disallow 2009 3% pay raise to salaried, non-union employees | (156) |
| To disallow 1/2 of 3% adjustment to Service Corporation charges | (136) |
| To adjust relocation expense to average as agreed to by CAD and Company | (88) |
| To adjust rate case expense to reflect 2 year amortization of current rate case expense | (124) |
| To adjust to FAS-87 pension basis for Service Corp employees | (259) |
| Advertising expense adjustment | (54) |
| To adjust payroll expense ratio 70.72% | (558) |
| To disallow tank access road and security Adjustment | (250) |
| To adjust gasoline and diesel fuel expenses | (189) |
| To disallow certain fines and penalties | (34) |
| To adjust rates for group life and medical insurance | (230) |
| To correct error in calculation of average tank painting costs | (25) |
| To disallow Company adjustment for increased sludge disposal costs | (23) |
| To reverse adjustments for lower power and chemical costs related to lower system delivery. | 25 |
| To adjust test year payroll reflected in the Company's Rule 42 exhibit to an accrual basis | (423) |
| Total Commission adjusted O&M Expenses | 56,821 |
| Going level Depreciation and Amortization Expenses per Company filing | 14,597 |
| Commission Adjustments: | |
| To reflect depreciation on plant adjustments made by Commission | (166) |
| Total Commission adjusted Depreciation and Amortization Expenses | 14,431 |
| Going level Taxes Other Than Income Taxes per Company filing | |
| Commission Adjustments: | 14,197 |
| To reflect CAD proposed adjustment to property taxes | 271 |
| Total Commission adjusted Taxes Other Than Income Taxes | 14,468 |
| Going level Rate Base per Company filing | 421,159 |
| Commission Adjustments: | |
| To exclude year end rate base adjustment relating to plant other than T&D mains, services, meters and hydrants | (1,702) |
| To exclude Company adjustment for future additions related to Leak Study | (4,000) |
| To adjust cash working capital to reflect additional lag in AWSCC charges | (312) |
| To adjust Contributions in Aid of Construction to include negative Acquisition Adjustment | (451) |
| Commission adjusted Rate Base | 414,694 |

# WEST VIRGINIA AMERICAN WATER COMPANY
# AUTHORIZED TARIFF

Applicable in the entire territory served by the West Virginia-American Water Company, except those communities noted on Original Sheet No. 7-a and 7-e.

## AVAILABILITY OF SERVICE

Available for general domestic, commercial, and industrial service.

## RATE

| | |
|---|---|
| First | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.1244 per 1,000 gallons |
| Next | 870,000 gallons used per month $6.0085 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.3717 per 1,000 gallons |
| All over | 9,000,000 gallons used per month $2.8437 per 1,000 gallons |

## MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of each meter installed, to-wit; for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:

| | | |
|---|---|---|
| 3/4 inch meter or less* | $ 20.57 | per month |
| 1 inch meter | $ 50.40 | per month |
| 1 - ½ inch meter | $ 100.15 | per month |
| 2 inch meter | $ 159.85 | per month |
| 3 inch meter | $ 299.15 | per month |
| 4 inch meter | $ 498.10 | per month |
| 6 inch meter | $ 995.50 | per month |
| 8 inch meter | $ 1592.45 | per month |

* All residential customers shall be served through a 5/8" meter, provided, however, that the Company may install a larger meter when reasonably necessary. This restriction shall not apply to residential meters currently in service.

**Appendix B**

# WEST VIRGINIA AMERICAN WATER COMPANY
# AUTHORIZED TARIFF

Applicable in the following areas:

- Winifrede, Carbon and Decota communities of Kanawha County
- Coopers Hollow Road at Winifrede

## AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

## RATE

| | |
|---|---|
| First | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.1244 per 1,000 gallons |
| Next | 870,000 gallons used per month $6.0085 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.3714 per 1,000 gallons |
| All over | 9,000,000 gallons used per month $2.8437 per 1,000 gallons |

## MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of each meter installed, to-wit; for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:

| | | | | | | |
|---|---|---|---|---|---|---|
| 3/4 | inch meter or less* | $ | 20.57 per month | + $10.00 | = $ | 30.57 per month |
| 1 | inch meter | $ | 50.40 per month | + 10.00 | = | 60.40 per month |
| 1-1/2 | inch meter | $ | 100.15 per month | + 10.00 | = | 110.15 per month |
| 2 | inch meter | $ | 159.85 per month | + 10.00 | = | 169.85 per month |
| 3 | inch meter | $ | 299.15 per month | + 10.00 | = | 309.15 per month |
| 4 | inch meter | $ | 498.10 per month | + 10.00 | = | 508.10 per month |
| 6 | inch meter | $ | 995.50 per month | + 10.00 | = | 1005.50 per month |
| 8 | inch meter | $ | 1592.45 per month | + 10.00 | = | 1602.45 per month |

* All residential customers shall be served through a 5/8" meter, provided, however, that the Company may install a larger meter when reasonably necessary. This restriction shall not apply to residential meters currently in service.

# WEST VIRGINIA AMERICAN WATER COMPANY
# AUTHORIZED TARIFF

Applicable in the entire territory served by the West Virginia-American Water Company.

## AVAILABILITY OF SERVICE

Available for wholesale service.

## RATE

| | |
|---|---|
| First | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.1244 per 1,000 gallons |
| Next | 870,000 gallons used per month $5.9545 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.5730 per 1,000 gallons |
| All over | 9,000,000 gallons used per month $3.2231 per 1,000 gallons |

## MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of each meter installed, to-wit; for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:

| | | | |
|---|---|---|---|
| 3/4 | inch meter or less* | $ 20.57 | per month |
| 1 | inch meter | $ 50.40 | per month |
| 1-1/2 | inch meter | $ 100.15 | per month |
| 2 | inch meter | $ 159.85 | per month |
| 3 | inch meter | $ 299.15 | per month |
| 4 | inch meter | $ 498.10 | per month |
| 6 | inch meter | $ 995.50 | per month |
| 8 | inch meter | $1,592.45 | per month |

# WEST VIRGINIA AMERICAN WATER COMPANY
# AUTHORIZED TARIFF

Applicable in the entire territory served by the West Virginia-American Water Company except the community noted on Original Sheet 8-a.

AVAILABILITY OF SERVICE

Available for private fire protection service.

RATE

Where connections, hydrants, sprinklers, etc. on private property are maintained by consumer:

| | Per Annum |
|---|---|
| 2 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 82.90 |
| 3 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 188.45 |
| 4 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 330.85 |
| 6 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 838.60 |
| 8 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 1,375.25 |
| 10 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 2,439.80 |
| 12 inch Service Line with hydrants, sprinklers, and/or hose connections | $ 3,418.85 |

These terms are payable monthly in advance.

WEST VIRGINIA
Infrastructure & Jobs Development Council

Gov. Joe Manchin, III
Chairman

Kenneth Lowe, Jr.
Public Member

Dwight Calhoun
Public Member

David "Bones" McComas
Public Member

Ron Justice
Public Member

Angela K. Chestnut, P.E.
Executive Director

Barbara J. Pauley
Administrative Secretary

October 26, 2009

Fred Riggleman, General Manager
Boone County Public Service District
P.O. Box 287
Danville, WV 25053

Re: Boone County Public Service District (Turtle Creek, Corridor G)
Water Project 2007W-975 Binding Commitment

Dear Mr. Riggleman:

At its October 7, 2009 meeting, the West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) voted to approve that the Boone County Public Service District (District) receive a binding commitment for a $1,062,000 Infrastructure Fund loan (0%, 40 yrs) and a $348,635 Infrastructure Fund grant to complete the funding of this $3,355,635 project. This project will extend water service along Corridor G from Turtle Creek to Mud River. The Infrastructure Fund loan and grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference.

If you have any questions regarding this matter, please contact the Angela Chestnut at 304-558-4607 (X201).

Sincerely,

Kenneth Lowe, Jr.

cc: Bob Decrease, P.E., BPH *(via e-mail)*
Terry Martin, Region III P&DC *(via e-mail)*
Terry Moran, P.E., Potesta & Associates *(via e-mail)*

NOTE: This letter is sent in triplicate. Please acknowledge receipt and immediately return two copies to the Infrastructure Council.

Boone County Public Service District

By: _____

Its: _____

Date: _____

## WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

Boone County Public Service District
Water Project 2007W-975

### SCHEDULE A

A. Approximate Amount:

| | |
|---|---|
| $1,062,000 | Loan |
| 348,635 | Grant |
| $1,410,635 | Total |

B. Loan: $1,062,000

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

**NOTICE:** The terms set forth above are subject to change following the receipt of construction bids.

C. Grant: $348,635

5. Grant Advancement Date(s): Monthly, upon receipt of proper requisition and after advancement of all Loan funding.
6. Special Conditions: None

**NOTICE:** The terms set forth above are subject to change following the receipt of construction bids.

D. Other Funding:

| | |
|---|---|
| COE grant | $1,500,000 |
| Boone Co. contribution | 300,000 |
| WVAWC | 145,000 |

E. Total Project Cost: $3,355,635

F. Proposed User Rates: Approximately $43.76 / 4000 gallons

WEST VIRGINIA
Infrastructure & Jobs Development Council

0101-08-0645-01

Gov. Joe Manchin, III
Chairman

Kenneth Lowe, Jr.
Public Member

Dwight Calhoun
Public Member

David "Bones" McComas
Public Member

Ron Justice
Public Member

Angela K. Chestnut, P.E.
Executive Director

Barbara J. Pauley
Administrative Secretary

July 16, 2009

Fred Riggleman, General Manager
Boone County Public Service District
P.O. Box 287
Danville, WV 25053

Re: Boone County Public Service District (Turtle Creek, Corridor G)
Water Project 2007W-975 (Revised)

Dear Mr. Riggleman,

The West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) has reviewed the Boone County Public Service District's (District) revised preliminary application to extend water service along Corridor G from Turtle Creek to Mud River (Project).

Based on the findings of the Water Technical Review Committee, the Infrastructure Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Water Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the revised preliminary application, the Infrastructure Council determined that the District should utilize a $1,500,000 Corps of Engineers grant, a $300,000 Boone County Commission contribution, and a $145,000 West Virginia American Water Company contribution to fund this $3,355,635 Project.

The Infrastructure Council also determined that the District may be eligible for a $1,062,000 Infrastructure Fund loan (0%, 40 years) and a $348,635 Infrastructure Fund grant pending final determination of the project's eligibility and readiness to proceed. **This letter is not a commitment of Infrastructure Funds.** The Project will be placed on the Infrastructure Council's pending list of projects.

If you have any questions regarding this matter, please contact the Angela Chestnut at 304-558-4607 (Ext. 201).

Sincerely,

Kenneth Lowe, Jr.

Enclosure

cc: Bob Decrease, P.E., BPH (w/o enclosure) *(via e-mail)*
Terry Martin, Region III Regional Intergovernmental Council
Terry Moran, P.E., Potesta & Associates, Inc.

RECEIVED
JUL 27 2009

180 Association Drive • Charleston, WV 25311 • Phone (304) 558-4607 • Fax (304) 558-4609
www.wvinfrastructure.com

TCM, DHL, AG

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Chairman of Boone County Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certify this 14th day of October, 2010 as follows:

1. On the 14th day of October, 2010, the Authority received the Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), of the Issuer, in the principal amount of $1,062,000, numbered AR-1 (the "Series 2010 A Bonds"), issued as a single, fully registered Bond dated October 14, 2010.

2. At the time of such receipt, all the Series 2010 A Bonds had been executed by the Chairman and the Secretary of the Issuer by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2010 A Bonds, of $36,500 being a portion of the principal amount of the Series 2010 A Bonds. The balance of the principal amount of the Series 2010 A Bonds will be advanced by the Authority and the West Virginia Infrastructure and Jobs Development Council to the Issuer as acquisition and construction of the Project progresses.

[Remainder of Page Intentionally Blank]

WITNESS our respective signatures on the day and year first written above

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Carol A. Cummings

Authorized Representative

BOONE COUNTY PUBLIC SERVICE DISTRICT

Chairman

03.10.10
091620.00002

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith on this 14th day of October, 2010:

(1) Bond No. AR-1, constituting the entire original issue of Boone County Public Service District Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), in the principal amount of $1,062,000 (the "Series 2010 A Bonds"), dated October 14, 2010 (the "Bonds"), executed by the Chairman and Secretary of Boone County Public Service District (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Resolution duly adopted by the Issuer on October 4, 2010, and a Supplemental Resolution duly adopted by the Issuer on October 4, 2010 (collectively, the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-captioned Bonds, duly certified by the Secretary of the Issuer;

(3) Executed counterparts of a loan agreement for the Series 2010 A Bonds, dated October 14, 2010, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement");

(4) A copy of the Agreement between the Issuer and West Virginia-American Water Company;

(5) A copy of the Letter of Credit; and

(6) Executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Series 2010 A Bonds to the Authority upon payment to the Issuer of the sum of $36,500, representing a portion of the principal amount of the Series 2010 A Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the forms of Certificate of Authentication and Registration thereon.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

BOONE COUNTY PUBLIC SERVICE DISTRICT

Chairman

09.29.10
091620.00002



CH5355688

# SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1 $1,062,000

KNOW ALL MEN BY THESE PRESENTS: This 14th day of October, 2010, that BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Boone County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of ONE MILLION SIXTY TWO THOUSAND DOLLARS ($1,062,000), 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 as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2012 to and including September 1, 2050, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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").

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 by and between the Issuer and the Authority, on behalf of the Council, dated October 14, 2010.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." 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"), a Bond Resolution duly adopted by the Issuer on October 4, 2010, and a Supplemental Resolution duly adopted by the Issuer on October 4, 2010 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), DATED APRIL 26, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,130,000 (THE "SERIES 2000 A BONDS"); AND (2) WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED APRIL 26, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,909,161 (THE "SERIES 2000 B BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Prior Bonds, unexpended proceeds of the Bonds and proceeds of the Letter of Credit (as defined in the Bond Legislation). Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, unexpended proceeds of the Bonds and proceeds of the Letter of Credit. Pursuant to the Bond Legislation, and as long as the Agreement (as defined in the Bond Legislation) is in place, 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 100% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds. In the event the Agreement is no longer in place, the Issuer has covenanted and agreed to adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and the Loan Agreement. In the event the Letter of Credit is terminated or reduced, the Issuer has covenanted and agreed to fund the Series 2010 A Bonds Reserve Account in the amounts required under the Bond Legislation and the Loan Agreement. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the 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 amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, BOONE COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL]

Chairman

SPECIMEN

ATTEST:

Secretary

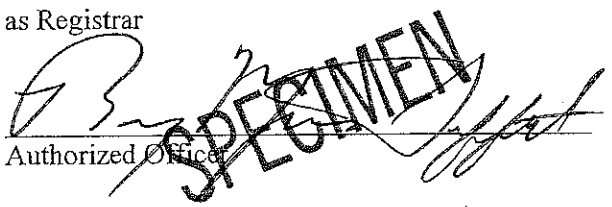
SPECIMEN

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2010 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: October 14, 2010.

THE HUNTINGTON NATIONAL BANK,
as Registrar




Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $36,500 | October 14, 2010 | (19) | |
| (2) | | (20) | |
| (3) | | (21) | |
| (4) | | (22) | |
| (5) | | (23) | |
| (6) | | (24) | |
| (7) | | (25) | |
| (8) | | (26) | |
| (9) | | (27) | |
| (10) | | (28) | |
| (11) | | (29) | |
| (12) | | (30) | |
| (13) | | (31) | |
| (14) | | (32) | |
| (15) | | (33) | |
| (16) | | (34) | |
| (17) | | (35) | |
| (18) | | (36) | |

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

## BOND DEBT SERVICE

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| | |
|---|---|
| Dated Date | 10/14/2010 |
| Delivery Date | 10/14/2010 |

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 10/14/2010 | | | |
| 6/1/2012 | 6,897 | | 6,897 |
| 9/1/2012 | 6,897 | | 6,897 |
| 12/1/2012 | 6,897 | | 6,897 |
| 3/1/2013 | 6,897 | | 6,897 |
| 6/1/2013 | 6,897 | | 6,897 |
| 9/1/2013 | 6,897 | | 6,897 |
| 12/1/2013 | 6,897 | | 6,897 |
| 3/1/2014 | 6,897 | | 6,897 |
| 6/1/2014 | 6,897 | | 6,897 |
| 9/1/2014 | 6,897 | | 6,897 |
| 12/1/2014 | 6,897 | | 6,897 |
| 3/1/2015 | 6,897 | | 6,897 |
| 6/1/2015 | 6,897 | | 6,897 |
| 9/1/2015 | 6,897 | | 6,897 |
| 12/1/2015 | 6,897 | | 6,897 |
| 3/1/2016 | 6,896 | | 6,896 |
| 6/1/2016 | 6,896 | | 6,896 |
| 9/1/2016 | 6,896 | | 6,896 |
| 12/1/2016 | 6,896 | | 6,896 |
| 3/1/2017 | 6,896 | | 6,896 |
| 6/1/2017 | 6,896 | | 6,896 |
| 9/1/2017 | 6,896 | | 6,896 |
| 12/1/2017 | 6,896 | | 6,896 |
| 3/1/2018 | 6,896 | | 6,896 |
| 6/1/2018 | 6,896 | | 6,896 |
| 9/1/2018 | 6,896 | | 6,896 |
| 12/1/2018 | 6,896 | | 6,896 |
| 3/1/2019 | 6,896 | | 6,896 |
| 6/1/2019 | 6,896 | | 6,896 |
| 9/1/2019 | 6,896 | | 6,896 |
| 12/1/2019 | 6,896 | | 6,896 |
| 3/1/2020 | 6,896 | | 6,896 |
| 6/1/2020 | 6,896 | | 6,896 |
| 9/1/2020 | 6,896 | | 6,896 |
| 12/1/2020 | 6,896 | | 6,896 |
| 3/1/2021 | 6,896 | | 6,896 |
| 6/1/2021 | 6,896 | | 6,896 |
| 9/1/2021 | 6,896 | | 6,896 |
| 12/1/2021 | 6,896 | | 6,896 |
| 3/1/2022 | 6,896 | | 6,896 |
| 6/1/2022 | 6,896 | | 6,896 |
| 9/1/2022 | 6,896 | | 6,896 |
| 12/1/2022 | 6,896 | | 6,896 |

## BOND DEBT SERVICE

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 3/1/2023 | 6,896 | | 6,896 |
| 6/1/2023 | 6,896 | | 6,896 |
| 9/1/2023 | 6,896 | | 6,896 |
| 12/1/2023 | 6,896 | | 6,896 |
| 3/1/2024 | 6,896 | | 6,896 |
| 6/1/2024 | 6,896 | | 6,896 |
| 9/1/2024 | 6,896 | | 6,896 |
| 12/1/2024 | 6,896 | | 6,896 |
| 3/1/2025 | 6,896 | | 6,896 |
| 6/1/2025 | 6,896 | | 6,896 |
| 9/1/2025 | 6,896 | | 6,896 |
| 12/1/2025 | 6,896 | | 6,896 |
| 3/1/2026 | 6,896 | | 6,896 |
| 6/1/2026 | 6,896 | | 6,896 |
| 9/1/2026 | 6,896 | | 6,896 |
| 12/1/2026 | 6,896 | | 6,896 |
| 3/1/2027 | 6,896 | | 6,896 |
| 6/1/2027 | 6,896 | | 6,896 |
| 9/1/2027 | 6,896 | | 6,896 |
| 12/1/2027 | 6,896 | | 6,896 |
| 3/1/2028 | 6,896 | | 6,896 |
| 6/1/2028 | 6,896 | | 6,896 |
| 9/1/2028 | 6,896 | | 6,896 |
| 12/1/2028 | 6,896 | | 6,896 |
| 3/1/2029 | 6,896 | | 6,896 |
| 6/1/2029 | 6,896 | | 6,896 |
| 9/1/2029 | 6,896 | | 6,896 |
| 12/1/2029 | 6,896 | | 6,896 |
| 3/1/2030 | 6,896 | | 6,896 |
| 6/1/2030 | 6,896 | | 6,896 |
| 9/1/2030 | 6,896 | | 6,896 |
| 12/1/2030 | 6,896 | | 6,896 |
| 3/1/2031 | 6,896 | | 6,896 |
| 6/1/2031 | 6,896 | | 6,896 |
| 9/1/2031 | 6,896 | | 6,896 |
| 12/1/2031 | 6,896 | | 6,896 |
| 3/1/2032 | 6,896 | | 6,896 |
| 6/1/2032 | 6,896 | | 6,896 |
| 9/1/2032 | 6,896 | | 6,896 |
| 12/1/2032 | 6,896 | | 6,896 |
| 3/1/2033 | 6,896 | | 6,896 |
| 6/1/2033 | 6,896 | | 6,896 |
| 9/1/2033 | 6,896 | | 6,896 |
| 12/1/2033 | 6,896 | | 6,896 |
| 3/1/2034 | 6,896 | | 6,896 |
| 6/1/2034 | 6,896 | | 6,896 |
| 9/1/2034 | 6,896 | | 6,896 |
| 12/1/2034 | 6,896 | | 6,896 |

## BOND DEBT SERVICE

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 3/1/2035 | 6,896 | | 6,896 |
| 6/1/2035 | 6,896 | | 6,896 |
| 9/1/2035 | 6,896 | | 6,896 |
| 12/1/2035 | 6,896 | | 6,896 |
| 3/1/2036 | 6,896 | | 6,896 |
| 6/1/2036 | 6,896 | | 6,896 |
| 9/1/2036 | 6,896 | | 6,896 |
| 12/1/2036 | 6,896 | | 6,896 |
| 3/1/2037 | 6,896 | | 6,896 |
| 6/1/2037 | 6,896 | | 6,896 |
| 9/1/2037 | 6,896 | | 6,896 |
| 12/1/2037 | 6,896 | | 6,896 |
| 3/1/2038 | 6,896 | | 6,896 |
| 6/1/2038 | 6,896 | | 6,896 |
| 9/1/2038 | 6,896 | | 6,896 |
| 12/1/2038 | 6,896 | | 6,896 |
| 3/1/2039 | 6,896 | | 6,896 |
| 6/1/2039 | 6,896 | | 6,896 |
| 9/1/2039 | 6,896 | | 6,896 |
| 12/1/2039 | 6,896 | | 6,896 |
| 3/1/2040 | 6,896 | | 6,896 |
| 6/1/2040 | 6,896 | | 6,896 |
| 9/1/2040 | 6,896 | | 6,896 |
| 12/1/2040 | 6,896 | | 6,896 |
| 3/1/2041 | 6,896 | | 6,896 |
| 6/1/2041 | 6,896 | | 6,896 |
| 9/1/2041 | 6,896 | | 6,896 |
| 12/1/2041 | 6,896 | | 6,896 |
| 3/1/2042 | 6,896 | | 6,896 |
| 6/1/2042 | 6,896 | | 6,896 |
| 9/1/2042 | 6,896 | | 6,896 |
| 12/1/2042 | 6,896 | | 6,896 |
| 3/1/2043 | 6,896 | | 6,896 |
| 6/1/2043 | 6,896 | | 6,896 |
| 9/1/2043 | 6,896 | | 6,896 |
| 12/1/2043 | 6,896 | | 6,896 |
| 3/1/2044 | 6,896 | | 6,896 |
| 6/1/2044 | 6,896 | | 6,896 |
| 9/1/2044 | 6,896 | | 6,896 |
| 12/1/2044 | 6,896 | | 6,896 |
| 3/1/2045 | 6,896 | | 6,896 |
| 6/1/2045 | 6,896 | | 6,896 |
| 9/1/2045 | 6,896 | | 6,896 |
| 12/1/2045 | 6,896 | | 6,896 |
| 3/1/2046 | 6,896 | | 6,896 |
| 6/1/2046 | 6,896 | | 6,896 |
| 9/1/2046 | 6,896 | | 6,896 |
| 12/1/2046 | 6,896 | | 6,896 |

## BOND DEBT SERVICE

Boone County PSD

IF

0% Interest Rate

40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 3/1/2047 | 6,896 | | 6,896 |
| 6/1/2047 | 6,896 | | 6,896 |
| 9/1/2047 | 6,896 | | 6,896 |
| 12/1/2047 | 6,896 | | 6,896 |
| 3/1/2048 | 6,896 | | 6,896 |
| 6/1/2048 | 6,896 | | 6,896 |
| 9/1/2048 | 6,896 | | 6,896 |
| 12/1/2048 | 6,896 | | 6,896 |
| 3/1/2049 | 6,896 | | 6,896 |
| 6/1/2049 | 6,896 | | 6,896 |
| 9/1/2049 | 6,896 | | 6,896 |
| 12/1/2049 | 6,896 | | 6,896 |
| 3/1/2050 | 6,896 | | 6,896 |
| 6/1/2050 | 6,896 | | 6,896 |
| 9/1/2050 | 6,897 | | 6,897 |
| | 1,062,000 | | 1,062,000 |

(Form of)

ASSIGNMENT

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

Dated: _____, 20___.

_____

In the presence of:

_____

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

Writer's Contact Information

October 14, 2010

Boone County Public Service District
Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

Boone County Public Service District
Danville, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs
Development Council
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Boone County Public Service District (the "Issuer"), a public service district and public corporation and political subdivision created and existing under the laws of the State of West Virginia, of its $1,062,000 Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of the loan agreement for the Bonds, dated October 14, 2010, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one bond, registered as to principal only to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2012, to and including September 1, 2050, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) paying certain costs of issuance for the Bonds and related costs.

We have also examined an executed Letter of Credit issue October 4, 2010 in the stated amount of $55,180.00 (the "Letter of Credit") by JP Morgan Chase Bank, NA, New York, New York, for funding the Series 2010 A Bonds Reserve Account.

We have also examined the applicable provisions of the Act, the Bond Resolution duly adopted by the Issuer on October 4, 2010, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 4, 2010 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued and the Loan Agreement has been entered into. 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 Bond Legislation and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

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

1. The Issuer is a duly created and validly existing public service district, public corporation and political subdivision of the State of West Virginia, with corporate power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the Council and cannot be amended by the Issuer so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer without the written consent of the Authority and the Council.

3. The Bond Legislation and all other necessary orders and resolutions have been duly and effectively adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable upon the Issuer. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Letter of Credit and issuance thereof have been duly approved by the Issuer.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Issuer's: (i) Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated April 26, 2000, issued in the original aggregate principal amount of $2,130,000 (the "Series 2000 A Bonds); (ii) Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated April 26, 2000, issued in the original aggregate principal amount of $4,909,161 (the "Series 2000 B Bonds"); unexpended proceeds of the Bonds and proceeds of the Letter of Credit, all in accordance with the terms of the Bonds and the Bond Legislation.

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

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

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

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

Very truly yours,

STEPTOE & JOHNSON PLLC

10.08.10
091620.00002

# H. Wyatt Hanna III
## Attorney at Law

H. Wyatt Hanna, III WV State Bar No. 1579

P. O. Box 8070 • South Charleston, West Virginia 25303
(304) 744-3150 • Fax (304) 744-3157


October 14, 2010

Boone County Public Service District
Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

Boone County Public Service District
Danville, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to Boone County Public Service District, a public service district in Boone County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a loan agreement for the Series 2010 A Bonds, dated October 14, 2010, including all schedules and exhibits attached thereto, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement"), the Bond Resolution duly adopted by the Issuer on October 4, 2010, the Supplemental Resolution duly adopted by the Issuer on October 4, 2010 (collectively, the "Bond Legislation"), the Agreement dated October 28, 1996, by and between the Issuer and West Virginia-American Water Company, as amended by the First Amendment to the Agreement dated August 10, 1999, Second Amendment to the Agreement dated October 18, 1999 and the Third Amendment to the Agreement dated October 14, 2010 (collectively, the "Agreement"), the Letter of Credit dated October 4, 2010, in the stated amount of $55,180, from JPMorgan Chase Bank, NA, New York, New York (the "Letter of Credit"), and other documents, papers, agreements, instruments and certificates relating to the above-captioned Bonds of the Issuer (the "Bonds") and orders of The County Commission of Boone County relating to the Issuer and the appointment of members of the Public Service Board of the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and political subdivision of the State of West Virginia.

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

3. The Letter of Credit and the issuance thereof have been duly approved by the Issuer.

4. The Agreement is valid and enforceable and has been approved by the Public Service Commission. The Agreement has been extended to the date of maturity of the Series 2010 A Bonds.

5. The members and officers of the Public Service Board of the Issuer have been duly, lawfully and properly appointed and elected, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

6. The Bond Legislation has been duly adopted by the Issuer and is in full force and effect.

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

8. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer including, without limitation, all requisite orders, consents, certificates and approvals from The County Commission of Boone County, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia.

9. The Issuer and the Company have received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds, the acquisition and construction of the Project and the operation of the System by the Company pursuant to the Agreement. The Issuer and the Company have received a Recommended Decision of the Public Service Commission of West Virginia entered on July 13, 2010 which became final order on August 2, 2010 in Case No. 10-0260-PWD-PW-CN, and an affidavit of CPA dated October 1, 2010, among other things granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project . The time for appeal of the order has expired prior to the date hereof. Such Order is in full force and effect.

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

11. Prior to construction, I will ascertain that all successful bidders have provided the drug-free workplace affidavit, submitted their drug free workplace plan, and the contracts contain language that

complies with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code. I will also ascertain that all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Prior to construction, I will review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, and will ascertain that such surety bonds and policies (i) are in compliance with the contracts; (ii) are adequate in form, substance and amount to protect the various interests of the Issuer; (iii) have been executed by duly authorized representatives of the proper parties; (iv) meet the requirements of the Act, the Bond Legislation and the Loan Agreement; and (v) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,

H. WYATT HANNA, III

# H. Wyatt Hanna III
## Attorney at Law

H. Wyatt Hanna, III WV State Bar No. 1579

P. O. Box 8070 • South Charleston, West Virginia 25303
(304) 744-3150 • Fax (304) 744-3157


October 14, 2010

Boone County PSD
Danville, WV

WV Water Development Authority
Charleston, WV

WV Infrastructure & Jobs Development Council
Charleston, WV

Steptoe & Johnson PLLC
Charleston, WV

RE: Boone County Public Service District
Turtle Creek Water Extension Project
Water Revenue Bonds Series 2010-A
(West Virginia Infrastructure Fund)

**FINAL REAL PROPERTY TITLE OPINION**

Ladies and Gentlemen:

I represent Boone County Public Service District ("District"), Boone County, West Virginia, with regard to the above referenced project. This Final Real Property Title Opinion is being provided to you to satisfy certain requirements of your agency with regard to the District's Turtle Creek Water Extension Project. 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 for the project as described in Plans and Specifications prepared by Potesta & Associates.

2. That I have examined the necessary records on file in the Office of the Clerk of the County Commission of Boone County, West Virginia, the county in which this project is to be located, and, in my opinion, the District has 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.

3. That the District has obtained 100% of the necessary easements, rights of way and real property sites for this project. All deeds or other documents which have been acquired by the District have been recorded in the Office of the Clerk of the County Commission of Boone County, West Virginia, in order to protect the title and interest of the District.

4. That I have been advised by Potesta & Associates, the consulting engineer for the District, that all of the necessary permits as may be required by governing authorities have been or will be acquired without delay to the construction of this project.

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

Sincerely,

H. Wyatt Hanna, III

HWHIII/rb

cc: Terry Moran, PE
Terry Martin

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
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October 14, 2010

Boone County Public Service District
Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

West Virginia-American Water Company
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Boone County Public Service District
Danville, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

West Virginia Infrastructure and Jobs
Development Council
Charleston, West Virginia

Ladies and Gentlemen:

We have served as counsel to West Virginia-American Water Company, a West Virginia corporation (the "Company"), in connection with (1) an Agreement dated October 28, 1996, by and between Boone County Public Service District (the "Issuer") and the Company, as amended (collectively, the "Agreement"), whereby the Company has agreed to make payments to the Issuer in amounts and at times sufficient to permit the Issuer to pay the principal of, interest, if any, on and administrative fee, if any, for the above-captioned Bonds (the "Bonds"), and (2) the issuance by JPMorgan Chase Bank, NA, New York, New York (the "Bank"), of its Letter of Credit dated October 4, 2010 (the "Letter of Credit"), in the amount of $55,180, for funding the Series 2010 A Bonds Reserve Account. The Bonds are being issued by the Issuer under Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and pursuant to a Bond Resolution duly adopted by the Issuer on October 4, 2010, as supplemented by the Supplemental Resolution duly adopted by the Issuer on October 4, 2010 (collectively, the "Bond Resolution"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance for the Bonds and related costs. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Resolution when used herein.

The Bonds have been sold to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement for the Series 2010 A Bonds, dated October 14, 2010 (the "Loan Agreement"). The Bonds are to be paid from Net Revenues derived from the operation of the System. Such Net Revenues consist solely of payments to be made by the Company to the Issuer under the Agreement. The Bonds are further secured by a Letter of Credit that may be drawn upon by the West Virginia Municipal Bond Commission, as Paying Agent for the Bonds, in the event Net Revenues are insufficient or unavailable to pay any installment of principal of or interest, if any, on the Bonds when due. The Company has entered into all necessary agreements with the Bank to obtain the Letter of Credit.

In connection with this opinion, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of the Articles of Incorporation, a Certificate of Existence and the By-laws of the Company, and all amendments thereto, the Agreement, the Letter of Credit and such other records, instruments, agreements, certificates (including, without limitation, certificates of public officials and of officers of the Company) and other documents (collectively, the "Documents"), and have conducted such investigations of law as we have deemed necessary for purposes of rendering this opinion. We have assumed the authenticity of the Documents submitted to us as originals, the conformity to originals of the Documents submitted to us as copies and the due authorization, execution and delivery of the Documents by all other parties thereto, if any. As to factual matters necessary for rendering our opinions herein, we have relied upon certificates of the Company with respect thereto without independently verifying the same.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Company is a corporation duly created and validly existing under the laws of the State of West Virginia, is qualified to do business in the State of West Virginia, and has full power and authority to execute and deliver the Documents to which the Company is a party and to undertake and perform its obligations thereunder.

2. The Documents to which the Company is a party have been duly authorized, executed and delivered by the Company, are valid and binding upon the Company, and are legally enforceable against the Company in accordance with the respective terms thereof so as to provide to the other respective parties the substantial enjoyment of the rights and benefits provided for therein, except as may be limited by the laws of bankruptcy, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally, by the application of public policy or by the exercise of judicial discretion.

3. To our knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, against or affecting the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the Company or the financial condition or operations of the Company, or the transactions contemplated by the Documents to which the Company is a party, or which would materially adversely affect the Documents to which the Company is a party.

4. To our knowledge, the execution, delivery and performance of and compliance with the provisions of the Documents to which the Company is a party do not and will not violate, conflict with, or constitute or result in a breach of or default under, the Articles of Incorporation or By-laws of the Company or any material agreement, instrument, document, indenture, mortgage, deed of trust, lease, contract, law, judgment, decree, order, statute, rule or regulation to which the Company is a party, by which the Company or its properties are bound or which may otherwise be applicable to the Company.

Very truly yours,

Jackson Kelly PLLC

JACKSON KELLY PLLC

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS AND AGREEMENT
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. INSURANCE
12. VERIFICATION OF SCHEDULE
13. RATES
14. AGREEMENT
15. PUBLIC SERVICE COMMISSION ORDERS
16. SIGNATURES AND DELIVERY
17. BOND PROCEEDS
18. PUBLICATION OF NOTICE OF FILING
19. SPECIMEN BONDS
20. CONFLICT OF INTEREST
19. LETTER OF CREDIT
20. GRANTS
21. EXECUTION OF COUNTERPARTS

We, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board of Boone County Public Service District in Boone County, West Virginia (the "Issuer"), and the undersigned COUNSEL to the Issuer, hereby certify this 14th day of October, 2010 in connection with the Issuer's Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), dated the date hereof (the "Series 2010 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning set forth in the Bond Resolution of

the Issuer duly adopted October 4, 2010, and a Supplemental Resolution of the Issuer duly adopted October 4, 2010 (collectively, the "Bond Legislation"), when used herein.

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition or construction of the Project, the operation of the System by the Company pursuant to the Agreement, the receipt of the Net Revenues, or in any way contesting or affecting the validity of the Bonds or the Agreement, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System of the System by the Company pursuant to the Agreement, or the collection of the Net Revenues or pledge thereof.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System of the System by the Company pursuant to the Agreement, including, without limitation, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS AND AGREEMENT: There has been no adverse change in the financial condition of the Issuer since the approval and execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement. The Issuer will provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are outstanding bonds or obligations of the Issuer which will rank on a parity with the Series 2010 A Bonds as to liens, pledge, source of and security for payment being the Issuers: (1) Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated April 26, 2000, issued in the original principal amount of $2,130,000 (the "Series 2000 A Bonds"); and (2) Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated April 26, 2000, issued in the original principal amount of $4,909,161 (the "Series 2000 B Bonds") (collectively, the "Prior Bonds").

The Series 2010 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all respects. Prior to the issuance of the Series 2010 A Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage tests of the Prior Bonds are met, and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2010 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of

the System. The Issuer is in compliance with the covenants of the Prior Bonds and the Prior Resolutions.

The Agreement is in full force and effect and the Company is making the required payments thereunder.

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

Bond Resolution

Supplemental Resolution

Infrastructure Council Loan Agreement

Public Service Commission Orders

Infrastructure Council Approval

County Commission Orders on Creation and Enlargement of District

County Commission Orders Appointing Current Boardmembers

Oaths of Office of Current Boardmembers

Rules of Procedure

Minutes of Current Year Organizational Meeting

Minutes on Adoption of Bond Resolution and Supplemental Resolution

Agreement between Issuer and Company and all amendments thereto

Letter of Credit and Related Documents

Infrastructure Fund Grant Agreement

Evidence of U.S. Army Corps of Engineers Grant

Evidence of Boone County Contribution

Evidence of Company Contribution

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Boone County Public Service District." The Issuer is a public service district and public corporation duly created by The County Commission of Boone County and presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Public Service Board consisting of 5 duly appointed, qualified and acting members whose names and dates of commencement and termination of current terms of office are as follows:

| Name | Date of Commencement of Office | Date of Termination of Office |
|---|---|---|
| Clarence Waller | 03/01/2005 | 04/01/2011 |
| Mary K. Roy | 03/06/2007 | 03/30/2013 |
| George Parsons | 08/04/2010 | 08/04/2014 |
| Grady Hayner | 03/06/2007 | 03/30/2013 |
| Jerry Sexton | 09/02/2008 | 09/02/2014 |

The names of the duly elected and/or appointed, qualified and acting officers of the Public Service Board of the Issuer for the calendar year 2010 are as follows:

| | | |
|---|---|---|
| Chairman | - | Clarence Waller |
| Secretary | - | Grady Hayner |

The duly appointed and acting counsel to Issuer is H. Wyatt Hanna, III, of South Charleston, West Virginia.

7. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and operation and maintenance of the System by the Company pursuant to the Agreement 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 Bonds.

8. MEETINGS, ETC.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds, the acquisition, construction, operation of the System by the Company pursuant to the Agreement and financing of the Project and the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable

statutes, including, without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. The successful bidders have provided the Drug-Free Workplace Affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code. All insurance for the System required by the Bond Legislation is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer 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 Issuer 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 it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with and has met the requirements of the Loan Agreement.

The Issuer will serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer will certify to the Authority the number of customers added to the System.

11. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability, property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Bond Legislation and the Loan Agreement. All insurance for the System required by the Bond Legislation and the Loan Agreement are in full force and effect.

12. VERIFICATION OF SCHEDULE: The final Schedule B attached to the Certificate of Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

13. RATES: The Issuer has received the Commission Order of the Public Service Commission of West Virginia entered on March 25, 2009, Commission Corrective Order dated March 25, 2009, and Commission Further Corrective Order dated April 1, 2009 in Case No. 08-0900-W-42T, approving the rates and charges for the services of the System

and has adopted a resolution prescribing such rates and charges. The time for appeal of such Final Orders has expired prior to the date hereof without any appeal.

14. AGREEMENT: The Agreement is valid and binding and has been approved by the Public Service Commission. The term of the Agreement has been extended to the date of maturity of the Series 2010 A Bonds.

15. PUBLIC SERVICE COMMISSION ORDERS: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia dated July 13, 2010, which became final order on August 2, 2010 and an affidavit of Certified Public Accountant dated October 1, 2010, in Case No. 10-0260-PWD-PW-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the Agreement and approving the financing for the Project The time for appeal of the Order has expired prior to the date hereof without any appeal. Such Order is in full force and effect.

16. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Chairman did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond for each series of the Bonds, dated the date hereof, by his or her manual signature, and the undersigned Secretary did officially cause the official seal of the Issuer to be affixed upon the Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

17. BOND PROCEEDS: On the date hereof, the Issuer received $36,500 from the Authority and the Council, being a portion of the principal amount of the Series 2010 A Bonds. The balance of the principal amount of the Series 2010 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

18. PUBLICATION OF NOTICE OF FILING: The Issuer has published any required notice with respect to, among other things, the date of filing of a formal application for a certificate of public convenience and necessity with the Public Service Commission of West Virginia, in accordance with Chapter 16, Article 13A, Section 25 of the West Virginia Code of 1931, as amended.

19. SPECIMEN BONDS: Delivered concurrently herewith are true and accurate specimens of the Bonds.

20. CONFLICT OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, 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 5% of the particular business enterprise or contract.

21. LETTERS OF CREDIT: On the date hereof, upon the delivery of the Bonds, the Letters of Credit shall be delivered to the Commission to fund the Series 2010 A Bonds Reserve Account.

22. GRANTS: As of the date hereof, the grant from the Corps of Engineers in the amount of $ 1,500,000, the grant from the West Virginia Infrastructure and Jobs Development Council in the amount of $232,663, the contribution from Boone County in the amount of $300,000 and the contribution from the Company in the amount of $145,000 are committed for the Project.

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

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of BOONE COUNTY PUBLIC SERVICE DISTRICT on the day and year first written above.

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
| --- | --- |
| _____ | Chairman |
| _____ | Secretary |
| _____ | Counsel to Issuer |

09.29.10
091620.00002

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

GENERAL CERTIFICATE OF
WEST VIRGINIA-AMERICAN WATER COMPANY ON:

1. INCUMBENCY AND SIGNATURES
2. DUE INCORPORATION AND EXISTENCE
3. CERTIFICATION OF COPIES OF DOCUMENTS
4. AUTHORIZATION FOR EXECUTION AND DELIVERY OF DOCUMENTS
5. EXECUTION, DELIVERY AND VALIDITY OF AGREEMENT
6. NO LITIGATION
7. AGREEMENTS AND OBLIGATIONS
8. NO CHANGE IN CONDITION
9. LETTER OF CREDIT

The undersigned VICE PRESIDENT of WEST VIRGINIA-AMERICAN WATER COMPANY, a corporation located within and incorporated under the laws of the State of West Virginia (the "Company"), HEREBY CERTIFIES this 14th day of October, 2010 in connection with the authorization, execution and delivery of an Agreement, dated October 28, 1996, by and between Boone County Public Service District (the "Issuer") and the Company, as amended (collectively, the "Agreement"), whereby the Company has agreed to make certain payments to the Issuer to permit the Issuer to pay when due, the Issuer's $1,062,000 aggregate principal amount of Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund) (the "Bonds"), to be issued to West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), pursuant to a Bond Resolution of the Issuer adopted October 4, 2010, as supplemented by a Supplemental Resolution of the Issuer adopted October 4, 2010 (collectively, the "Bond Legislation"), all capitalized terms used herein and not otherwise defined herein to have the same meanings set forth in the Bond Legislation, as follows:

1. INCUMBENCY AND SIGNATURES: The undersigned are and were at all relevant times the duly elected, qualified and serving Vice President and Secretary of the Company, both duly elected or appointed by the Board of Directors of the Company, and are familiar with the terms of the transactions described in the Documents, herein defined. Set forth below are our true and genuine signatures.

2. DUE INCORPORATION AND EXISTENCE: The Company is a corporation duly created and validly existing under the laws of the State of West Virginia, duly authorized to conduct its affairs and transact business in the State of West Virginia, and is not prohibited by any provision of its Articles of Incorporation or By-Laws from conducting its business described in, or effectuating the transactions contemplated in, the Agreement and the other Documents, herein defined.

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

Certified copy of Certificate of Existence

Agreement

Letter of Credit

4. AUTHORIZATION FOR EXECUTION AND DELIVERY OF DOCUMENTS: The Company has full and all requisite right, power and authority to own and operate its properties, to carry on its business as now conducted, and to execute, deliver and carry out and perform the terms, obligations and conditions set forth in the Documents.

5. EXECUTION, DELIVERY AND VALIDITY OF AGREEMENT. The Agreement has been duly authorized, executed and delivered by the Company and on its behalf by duly chosen, qualified and acting officers of the Company, and is in full force and effect as of the date hereof. The Agreement constitutes a valid and legally binding agreement and obligation of the Company enforceable in accordance with its terms, except (i) as the same shall be subject to limitations upon the right to obtain judicial orders requiring specific performance or granting injunctive relief, (ii) as may be limited by the laws of bankruptcy, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally, and (iii) as enforceability of indemnity provisions contained therein may be limited under applicable laws or may be against public policy. The execution and delivery of the Agreement by the Company and the compliance with the provisions thereof will not conflict with, result in a breach of the terms, conditions or provisions of or constitute a default under, or result in the creation or any imposition of any lien, charge or encumbrance upon any of the property or assets of the Company pursuant to, the Articles of Incorporation or By-laws of the Company or the terms of any indenture, mortgage, deed of trust, loan agreement, undertaking or other agreement, document or instrument to which the Company is a party or bound or to which any of the property or assets of the Company are subject, nor will such action conflict with, result in a material breach of, constitute a default under or result in a violation of any statute, law, ordinance, judgment, ruling, decree, order, rule or regulation to which the Company is subject or to which any of its properties are subject or which is applicable to the transactions described

herein; and no consent, certificate, approval, authorization, order, registration, exemption or qualification of or with any court or any regulatory authority or any governmental authority or body is required for the execution and delivery of the Agreement by the Company or in connection with the Project, the Agreement or the transactions contemplated thereby, except those already obtained.

6. NO LITIGATION: No litigation, proceeding, suit, inquiry, action or investigation at law or in equity is pending or, to the knowledge of the undersigned, threatened (or is there any basis therefor), against or affecting the Company in or before or by any court, public board or administrative body, which would restrain or enjoin the execution or delivery of the Documents or the performance of any obligations of the Company contained therein or matters in connection therewith, or in any way contesting or affecting the Documents, or attempting to limit, restrain, enjoin or prevent the Company from functioning and making the payments required thereunder, or which questions the validity of the Documents or any documents or the transactions contemplated thereby, or contesting the corporate existence of the Company, or wherein an unfavorable decision, ruling or finding would have a material adverse effect upon the financial condition of the Company, the validity or enforceability of the Documents, the Company's ability to perform its obligations under the Documents or the corporate existence or powers of the Company. There is no action or proceeding pending or threatened that would liquidate or dissolve the Company.

7. AGREEMENTS AND OBLIGATIONS: All agreements, covenants, arrangements and conditions to be complied with or satisfied and all obligations to be performed by the Company pursuant to or in connection with the Documents or the transactions contemplated thereby on or prior to the date of such documents have been complied with, satisfied and performed and there are no defaults or events of default under the Documents or such documents which have occurred and are continuing.

8. NO CHANGE IN CONDITION: There have been no undisclosed material adverse changes in the financial condition of the Company since the offer by the Authority to purchase the Bonds of the Issuer.

9. LETTER OF CREDIT: The Company has obtained and will maintain the Letter of Credit, including all extensions thereof, or renewal or replacement Letter of Credit, to fund the reserve account for the Bonds, so long as the Bonds are outstanding, unless such requirement is waived by the Authority and the Council. Without limiting the generality of the foregoing, the Company further agrees to promptly pay all fees and expenses in connection with the Letter of Credit, which payments shall be in addition to any other payments to be made by the Company under the Agreement with respect to the Bonds or otherwise to the Issuer.

IN WITNESS WHEREOF, I have hereunto set my hand on the day and year first written above.

WEST VIRGINIA-AMERICAN WATER COMPANY

Michael A. Miller

Vice President

ATTEST:

Secretary

09.29.10
091650.00002



CH5355702

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

CERTIFICATE OF ENGINEER

I, Terence C. Moran, P.E., Registered Professional Engineer, West Virginia License No.12985 of Potesta & Associates, Inc., Charleston, West Virginia, hereby certify this 14th day of October, 2010 as follows:

1. My company is engineer for the acquisition and construction of certain additions, betterments, improvements and extensions (the "Project") to the existing public waterworks system (the "System") of Boone County Public Service District (the "Issuer") to be constructed primarily in Boone County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (collectively, the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Issuer on October 4, 2010, as supplemented by the Supplemental Resolution adopted by the Issuer on October 4, 2010, the Loan Agreement for the Series 2010 A Bonds, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated October 14, 2010 (collectively, the "Loan Agreement").

2. The Series 2010 A Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying costs of issuance and related costs.

3. To the best of our knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my company and approved by the Council and the West Virginia Bureau for Public Health (the "BPH"), and any change orders approved by the Issuer, the Council, and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least forty (40) years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and H. Wyatt Hanna, Counsel to the District has ascertained that all successful bidders 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 for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the successful bidders have provided the Drug-Free Workplace Conformance Affidavit as evidence of the Vendor's compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; (vi) the bid documents relating to the Project reflect the Project as approved by the BPH and the bid forms provided

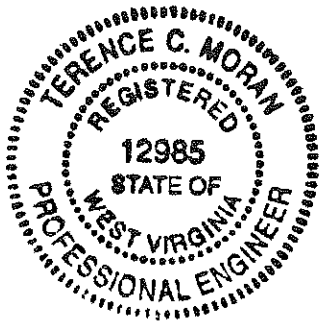
to the bidders contain all critical operational components of the Project; (vii) the successful bids include prices for every item on such bid forms; (viii) the uniform bid procedures were followed; (ix) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (x) in reliance upon the certificate of the Issuer's certified public accountant, Bassett & Lowe, of even date herewith, the use fees to be received by the Issuer from the Company under the Agreement dated October 28, 1996, as amended, will be sufficient to comply with the provisions of the Loan Agreement; (xi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the BPH; and (xii) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

4. The Project has been designed to, and the construction contracts provide for, water service for up to 180 customers in the US 119, Long Branch Road, Prichard Road, Arden Lane, Mud River Road, Turtle Creek Road, Raccoon Branch Road, Indian Grave Road, Olive Branch Road and Low Gap Road areas.

[Remainder of Page Intentionally Blank]

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

(SEAL)




POTESTA & ASSOCIATES, INC.

Terence C. Moran, P.E.
West Virginia License No. 12985

09.29.10
091620.00002



CH5355676

# Boone County - Turtle Creek /Corridor G Waterline Extension - Schedule B

## IJDC PROJECT 2007W-975

| A. COST OF PROJECT | TOTAL | Boone County Commission | West Virginia American Water | US ACE | WV IJDC Loan | WV IJDC Grant |
|---|---|---|---|---|---|---|
| 1 Construction | | | | | | |
| Contract 1 - Base Bid plus 4 alternates | 2,515,763.00 | 0.00 | 145,000.00 | 1,500,000.00 | 773,150.00 | 97,613.00 |
| Change Order - additional Rip Rap (Item 58) | 97,500.00 | 0.00 | 0.00 | 0.00 | 97,500.00 | 0.00 |
| 2 Technical Services | | | | | | |
| a. Environmental Assessment | 17,050.00 | 17,050.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| b. Design (Prelim, Final, Complete, Bidding & Const. Admin) | 162,530.00 | 150,530.00 | 0.00 | 0.00 | 12,000.00 | 0.00 |
| c. Construction Inspection | 107,470.00 | 68,620.00 | 0.00 | 0.00 | 38,850.00 | 0.00 |
| d Survey of Controlled access on as builts | 9,950.00 | 9,950.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Archeologist | 3,850.00 | 3,850.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 3 Legal & Fiscal | | | | | | |
| a. Legal (title) | 10,000.00 | 0.00 | 0.00 | 0.00 | 10,000.00 | 0.00 |
| b. Legal (PSC) | 10,000.00 | 0.00 | 0.00 | 0.00 | 10,000.00 | 0.00 |
| 4 Administrative - Region III | | | | | | |
| a. Project Coordinator - RIC | 30,000.00 | 30,000.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| b US ACE administrative | 80,000.00 | 0.00 | 0.00 | 0.00 | 80,000.00 | 0.00 |
| c Other Administrative Costs | 16,000.00 | 0.00 | 0.00 | 0.00 | 16,000.00 | 0.00 |
| 5 Sites & Other Lands | | | | | | |
| a. Easements - Potesta and Associates | 20,000.00 | 20,000.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 6 Construction Contingency 5% | 135,050.00 | 0.00 | 0.00 | 0.00 | 0.00 | 135,050.00 |
| 7 Sub Total line 1 thru 7 | 3,215,163.00 | 300,000.00 | 145,000.00 | 1,500,000.00 | 1,037,500.00 | 232,663.00 |
| B Cost of Financing | | | | | | |
| 8 Funded Reserve | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 9 Registrar Fees | 500.00 | 0.00 | 0.00 | 0.00 | 500.00 | 0.00 |
| 10 Bond Council | 24,000.00 | 0.00 | 0.00 | 0.00 | 24,000.00 | 0.00 |
| 11 Sub Total Cost of Financing | 24,500.00 | 0.00 | 0.00 | 0.00 | 24,500.00 | 0.00 |
| 12 Total Cost of Project (Line 7+ Line 11) | 3,239,663.00 | 300,000.00 | 145,000.00 | 1,500,000.00 | 1,062,000.00 | 232,663.00 |
| C SOURCES OF OTHER FUNDS | | | | | | |
| 13 Boone County Commission Grant | 300,000.00 | 300,000.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 14 West Virginia American Water Company | 145,000.00 | 0.00 | 145,000.00 | 0.00 | 0.00 | 0.00 |
| 15 US ACE 340 Grant | 1,500,000.00 | 0.00 | 0.00 | 1,500,000.00 | 0.00 | 0.00 |
| 16 WV IJDC Grant | 232,663.00 | 0.00 | 0.00 | 0.00 | 0.00 | 232,663.00 |
| 17 Total Grants (lines 13 through 16) | 2,177,663.00 | 300,000.00 | 145,000.00 | 1,500,000.00 | 0.00 | 232,663.00 |
| 18 Total Bond Issue | 1,062,000.00 | 0.00 | 0.00 | 0.00 | 1,062,000.00 | 0.00 |

Boone County PSD — October 4, 2010 (Date)

Potesta & Associates — October 5, 2010 (Date)

**BASSETT & LOWE**
CERTIFIED PUBLIC ACCOUNTANTS
1156 SOUTH MAIN STREET
MILTON, WEST VIRGINIA 25541
Phone: (304) 743-5573 FAX: (304) 743-1150
Toll Free: 1-800-720-9629
e-mail: rbassett@bassettlowe.com
e-mail: rlowe@bassettlowe.com

October 14, 2010

Boone County Public Service District
Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Boone County Public Service District
Danville, West Virginia

Ladies and Gentlemen:

Based upon the use fees to be paid by West Virginia-American Water Company (the "Company") to Boone County Public Service District (the "Issuer"), under that certain Agreement dated as of October 28, 1996, as amended (the "Agreement"), by and between the Company and the Issuer, it is our opinion that such payments will be sufficient to provide revenues which, together with other revenues of the waterworks system (the "System") of the Issuer, will be sufficient to pay (i) 100% of the maximum amount required in any year for debt service on the Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), to be issued in the original aggregate principal amount of $1,062,000 to the West Virginia Water Development Authority on the date hereof (the "Series 2010 A Bonds"), and all other obligations secured by a lien on or payable from the revenues of the System, on a parity with the Bonds, including the Issuer's: (1) Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated April 26, 2000, issued in the original principal amount of $2,130,000 (the "Series 2000 A Bonds"); and (2) Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated April 26, 2000, issued in the original principal amount of $4,909,161 (the "Series 2000 B Bonds") (collectively, the "Prior Bonds"); and (ii) any Operating Expenses of the System not paid by the Company.

It is further our opinion that the payments from the Company under the Agreement shall not be less than 100% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the Series 2010 A Bonds and the Prior Bonds.

Very truly yours,

Bassett & Lowe

Bassett & Lowe

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Chairman of the Public Service Board of Boone County Public Service District in Boone County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of $1,062,000 Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), of the Issuer, dated October 14, 2010 (the "Series 2010 A Bonds"), hereby certify this 14th day of October, 2010 as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Resolution duly adopted by the Issuer on October 4, 2010 as supplemented by Supplemental Resolution duly adopted on October 4, 2010 (collectively, the "Bond Resolution"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on October 14, 2010, the date on which the Bonds are being physically delivered in exchange for $36,500, being a portion of the principal amount of the Series 2010 A Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Resolution pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2010 A Bonds were sold on October 14, 2010, to the Authority, pursuant to a loan agreement dated October 14, 2010, by and between the Issuer and the Authority, on behalf of the Council, for an aggregate purchase price of $1,062,000

(100% of par), at which time, the Issuer received $36,500 from the Authority and the Council, being the first advance of the principal amount of the Series 2010 A Bonds. The balance of the principal amount of the Series 2010 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

7. The Issuer shall, on the date hereof or immediately hereafter (in any event, not more than 6 months from the date hereof, enter into agreements which require the Issuer to expend in excess of 5% of the aggregate principal amount of the Bonds on the Project, constituting a substantial binding commitment, or has already done so. The acquisition, construction and equipping of the Project and the allocation of proceeds of the Bonds to expenditures for costs of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest, if any, and proceeds deposited in the Reserve Account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before February, 2012. The acquisition and construction of the Project is expected to be completed by August 1, 2011.

8. The total cost of the Project financed from the proceeds of the Bonds (including all costs of issuance of the Bonds) is estimated at $3,239,663. Sources and uses of funds for the Project are as follows:

| SOURCES | |
|---|---|
| Proceeds of the Series 2010 A Bonds | $1,062,000 |
| U.S. Army Corps of Engineers Grant | $1,500,000 |
| Infrastructure Grant | $232,663 |
| Boone County Commission Contribution | $300,000 |
| Company Contribution | $145,000 |
| Total Sources | $3,239,663 |
| **USES** | |
| Costs of Acquisition and Construction of the Project | $3,215,163 |
| Costs of Issuance | $24,500 |
| Total Uses | $3,239,663 |

9. Pursuant to Article V of the Bond Resolution, the following special funds or accounts have been created or continued relative to the Series 2010 A Bonds:

(1) Revenue Fund (establishes by Prior Resolution);

(2) Series 2010 A Bonds Construction Trust Fund;

(3) Series 2010 A Bonds Sinking Fund; and

(4) Series 2010 A Bonds Reserve Account (to be funded with the Letter of Credit);

10. Pursuant to Article VI of the Bond Resolution, the proceeds of the Bonds will be deposited as follows:

(1) Bond proceeds in the amount of $-0- will be deposited in the Series 2010 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Series 2010 A Bonds during acquisition and construction of the Project and for a period not to exceed six months following completion thereof.

(2) Bond proceeds in the amount of $-0- will be deposited in the Series 2010 A Bonds Reserve Account.

(3) The balance of the proceeds of the Series 2010 A Bonds will be deposited in the Series 2010 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 2010 A Bonds and related costs.

11. Moneys held in the Series 2010 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2010 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2010 A Bonds Sinking Fund and Series 2010 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2010 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 9 months of the date hereof.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2010 A Bonds Sinking Fund for payment of interest, if any, on the Bonds and the amount deposited in the

Series 2010 A Bonds Reserve Account, if any, all of the proceeds of the Series 2010 A Bonds will be expended on the Project within 15 months from the date of issuance thereof.

15. The Issuer does not expect to sell or otherwise dispose of the Project prior to the last maturity date of the Bonds.

16. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

19. The Issuer covenants that it shall maintain thorough and accurate accounting records, in conformance with generally accepted accounting principles, relative to the proceeds of Bonds so that use of proceeds from each series of the Bonds can be accounted for.

20. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

21. The Issuer shall use the Bond proceeds solely for the costs of the Project.

22. The Bonds are not federally guaranteed.

23. The Issuer has retained the right to amend the Bond Resolution authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain governmental or public purpose bonds.

24. The Issuer has either (a) funded the Series 2010 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds; (b) created the Series 2010 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2010 A Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year; or (c) purchased letter(s) of credit in amounts sufficient to satisfy the purchasers of the Bonds to fund the Series 2010 A Bonds Reserve Account. Moneys in the Series 2010 A Bonds Reserve Account, if any, and the Series 2010 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

25. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same sources

of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

26. All proceeds of the Series 2010 A Bonds shall be used for payment of the costs of the Project within 3 years the date hereof.

27. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

28. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

29. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

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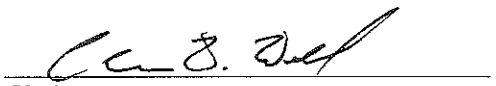
WITNESS my signature on the day and year first written above.

BOONE COUNTY PUBLIC
SERVICE DISTRICT



Chairman

09.29.10
091620.00002



CH5355678

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010

L/C NO.: TFTS-881433 ITEM NO: 0001

TO:
WEST VIRGINIA MUNICIPAL BOND
COMMISSION, ATTN: SARA BOARDMAN
(REFER TO LC TEXT FOR FULL DETAILS)
1207 QUARRIER STREET, SUITE 401
CHARLESTON, WV 25301

RE: TFTS-881433

WEST VIRGINIA MUNICIPAL BOND COMMISSION
ON BEHALF OF THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE OF LETTER OF CREDIT BANK

THE UNDERSIGNED OFFICER OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NEW YORK, NEW YORK (THE "BANK"), HEREBY CERTIFIES IN CONNECTION WITH THE ISSUANCE BY THE BANK OF ITS LETTER OF CREDIT, NO. TFTS-881433, DATED OCTOBER 4, 2010 IN THE AMOUNT OF USD55,180.00 (THE "LETTER OF CREDIT"), TO
WEST VIRGINIA MUNICIPAL BOND COMMISSION
ON BEHALF OF THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY
AS REGISTERED OWNER OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND) (THE "ISSUER")
FOR AND ON BEHALF OF THE BANK, AS FOLLOWS:

1. THE BANK IS A NATIONAL BANKING ASSOCIATION UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND IS ABLE TO DO BUSINESS IN THE STATE OF WEST VIRGINIA WITH THE POWER AND AUTHORITY TO ISSUE AND DELIVER THE LETTER OF CREDIT UNDER APPLICABLE LAW.

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010

L/C NO.: TFTS-881433 ITEM NO: 0001

TO:
WEST VIRGINIA MUNICIPAL BOND
COMMISSION, ATTN: SARA BOARDMAN
(REFER TO LC TEXT FOR FULL DETAILS)
1207 QUARRIER STREET, SUITE 401
CHARLESTON, WV 25301

2. THE LETTER OF CREDIT HAS BEEN DULY AUTHORIZED, EXECUTED AND DELIVERED BY THE BANK.

3. WE HAVE BEEN ADVISED THAT LETTER OF CREDIT TFTS-881433 IS PROVIDED TO SECURE CERTAIN BOONE COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND) AND SECURE THE PAYMENT OF UP TO USD55,180.00, WHICH WE ARE ADVISED IS APPROXIMATELY EQUAL TO TWO YEARS' DEBT SERVICE ON THE ISSUER'S WATER REVENUE BONDS, SERIES 2010 A DATED OCTOBER 14, 2010.. THE WEST VIRGINIA MUNICIPAL BOND COMMISSION LETTER OF CREDIT (TFTS-881433) HAS BEEN DELIVERED BY THE BANK PURSUANT TO AN APPLICATION FOR IRREVOCABLE STANDBY LETTER OF CREDIT.

IN WITNESS WHEREOF, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, HAS CAUSED THIS CERTIFICATE TO BE EXECUTED BY A DULY AUTHORIZED OFFICER, THIS 4 TH DAY OF OCTOBER, 2010.

JPMORGAN CHASE BANK, N.A.

BY: _____

AUTHORIZED OFFICER Jon P. Pierson
Assistant Vice President

# TOWN OF DANVILLE

OFFICE OF THE MAYOR

DANVILLE, WEST VIRGINIA 25053

## RESOLUTION

RESOLVED, That the common council of the Town of Danville does hereby petition and request the County Court of Boone County, West Virginia, on its own motion, to adopt an order proposing the creation pf a public service district for the construction, acquisition by purchase, maintenance, operation, improvement and extension of properties for providing sewer services to the greater Danville- Rock Creek area of said Boone County, it being the considered opinion of the common council of said municipality that the creation of such a public service district is necessary to the preservation of the public health, comfort and convenience of such area.

corrected 6 July 1973 D.

# TOWN OF DANVILLE

OFFICE OF THE MAYOR

DANVILLE, WEST VIRGINIA 25053

Taken from pages 29 and 30 Minutes Record Book.

May 23, 1973
Council Chambers
Danville, W. Va.

The Common Council met in Special Session on the above date with the following members present: Mayor, Jae L. Hopkins; Recorder, Ruby E. Alleman; Councilmen; Walter Burton, Arthur Chafin, James Keel, Donald Jarrell, and Earl Songer.

The purpose of the meeting was to discuss the joining of Danville and Rock Creek into a Public Service District to acquire a sewer system.

Mr. John Hart of Milam Engineers, Dunbar, W. Va. met with the Council to discuss the project. He announced that as of July 1, ten million dollars

would be available and fifteen million more dollars after July 1. Funding is available now.

Guests of the Council were Mr. John Tillinghast and Mr. Frank Lawley. In order to form the P.S.A and get a loan for the sewer system, one hundred signatures of property owners anywhere in the area were required. The funding is available on an 80-20 basis.

A resolution was presented to the Council for formation of the Danville Public Service District. Upon a motion by James Reed and seconded by Don Darnell that the Council approve

# TOWN OF DANVILLE

OFFICE OF THE MAYOR

DANVILLE, WEST VIRGINIA 25053

the resolution, the motion passed by unanimous vote.

A commission was named composed of the following: John Tillinghast, James Reed, and Frank Rawley.

The meeting was adjourned at 8:15 P.M.

Joe L. Hopkins
Mayor

Joe L. Hopkins
Recorder pro-tem

11-2-71

ward Cooper
bert Bunch
ike Vickers
hn Tillinghast ✓ - Danville (Member)
arl Songer
K. Howard ✓ Madison (Chairman)
oe Eddy Griffith ✓ Price Hill

# TOWN OF DANVILLE

OFFICE OF THE MAYOR

DANVILLE, WEST VIRGINIA

November 2, 1971

To Whom It May Concern:

The following motion was taken from the minutes' book page 280 of the March 3, 1971 Council meeting.

"A motion was made by James Reed that steps be taken to declare this area a Public Service District and that the Town of Danville become a part of that district. This motion was seconded by Willie Francis Smith and passed by unanimous vote.

Ruby E. Alleman
Recorder

Oct 1, 1973

10-1-73

A Resolution and Order fixing a date of hearing on the creation of a proposed public service district for parts of Scott District and Washington District, Boone County, West Virginia; and providing for the publication and posting of a notice of such hearing.

WHEREAS, there has heretofore been filed in the office of the Clerk of the County Court of Boone County, West Virginia, a petition to this County Court, for the creation of a public service district for certain portions of Washington District and Scott District, Boone 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 13A 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 Boone County, West Virginia, as follows:

Section 1. That the County Court of Boone 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 Court a petition for the creation of a public service district for parts of Scott District and Washington District, Boone 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 residing within and owning real property within the limits of the propose

public service district, and said County Court further finds and declares that said petition in all respects meets the requirements of Article 13A 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 "DANVILLE PUBLIC SERVICE DISTRICT".

(b) The territory to be embraced in said public service district shall be as follows:

> BEGINNING at a point having a latitude of N. 37° 59' 40" and a longitude of W. 81° 53' 19", also being the northwest corner of the Spruce Fork Public Service District, thence N. 20° 00' W. 2.60 miles to a point in the Boone and Lincoln County Line having a latitude of N. 38° 01' 41" and a longitude of 81° 54' 19"; thence, leaving the Boone and Lincoln County Line North 1.70 miles to a point in the Washington And Scott Magisterial District Line, having a latitude of N. 38° 03' 12" and a longitude of W. 81° 54' 19"; thence, following said District Line in a northerly direction 2.25 miles to a point having a latitude of N. 38° 04' 28" and a longitude of W. 81° 54' 43"; thence, leaving the Washington and Scott District Line N. 60° 00' E. 4.90 miles to a point having a latitude of N. 38° 06' 37" and a longitude of W. 81° 50' 00"; thence, East 4.20 miles to a point in the Scott and Peytona Madisterial District Line, having a latitude of N. 38° 06' 37" and a longitude of W. 81° 45' 21"; thence, following said District Line in a southerly direction 3.25 miles to a point where the Scott, Peytona, and Sherman Magisterial District Lines meet, having a latitude of N. 38° 04' 23" and a longitude of W. 81° 44' 03"; thence, leaving the Peytona Magisterial District Line but following the Scott and Sherman Magisterial District Line in a southwesterly direction 0.85 miles to a point where the Scott, Sherman and Crook Magisterial District Lines meet, having a lati-

tude of N. 38° 03' 44" and a longitude of W. 81° 44' 45"; thence, leaving said District Lines N. 76° 30' W. 4.50 miles to the eastermost corner of the Town of Danville; thence, S. 25° 00' W. 0.5 miles to the westermost corner of the Town of Madison; thence, S. 30° 45' W. 6.1 miles to the POINT OF BEGINNING;

The above described boundary contains 31.74 square miles, serving the communities of Danville, Hopkins, Rock Creek, Foster, Turtle Creek, Turtletown, and contiguous areas, all of which lie in Boone County, West Virginia, as shown on a map prepared by J. H. Milam, Inc., Consulting Engineers, Dunbar, West Virginia titled Danville Public Service District, District Map, dated May 31, 1973.

(c) The purpose of said public service district shall be to construct, or acquire by purchase or otherwise, and maintain, operate, improve and extend properties supplying water and sewerage services within such territory and also outside such territory to the extent permitted by law.

(d) The territory described above does not include within its limits the territory of any public service district orgainized under the laws hereinbefore referred to.

Section 3. That on Monday, October 22, 1973, at the hour of 9:30 o'clock A. M., this County Court shall meet in the County Courthouse at Madison, West Virginia, for the purpose of conducting a public hearing on the creation of the proposed public service district at which time and place all persons residing in or owning or having any interest in property in the proposed public service district may appear before this County Court and shall have an

opportunity to be heard for and against the creation of said district, and at such hearing, this County Court shall consider and determine the feasibility of the creation of the proposed public service district.

Section 4. That the County Court Clerk is hereby authorized and directed to cause notice of such hearing in substantially the form hereinafter set out to be published on October 11, and 18, 1973, in the Coal Valley News, a newspaper of general circulation published in Boone County.

Section 5. 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 said hearing.

ADOPTED BY THE COUNTY COURT OCTOBER 1, 1973.

James R. Goodwin
President

Attest:

Clerk

NOTICE OF PUBLIC HEARING ON CREATION OF

DANVILLE PUBLIC SERVICE DISTRICT

NOTICE IS HEREBY GIVEN that a legally sufficient petition has been filed with the Clerk of the County Court of Boone County, West Virginia and has been presented to the County Court of Boone County for the creation of a Public Service District for parts of Scott District and Washington District, Boone County, West Virginia, for the purpose of constructing or acquiring by purchase or otherwise, and the maintenance, operation, improvement and extension of public service properties supplying water and sewerage services within the said District and also outside the said District to the extent permitted by law; to be named "Danville Public Service District"; and having the following described bouldaries:

BEGINNING at a point having a latitude of N. 37° 59' 40" and a longitude of W. 81° 53' 19", also being the northwest corner of The Spruce Fork Public Service District, thence N. 20° 00' W. 2.60 miles to a point in the Boone and Lincoln County Line having a latitude of N. 38° 01' 41" and a longitude of 81° 54' 19"; thence leaving the Boone and Lincoln County Line North 1.70 miles to a point in the Washington and Scott Magisterial District Line, having a latitude of N. 38° 03' 12" and a longitude of W. 81° 54' 19"; thence following said District Line in a northerly direction 2.25 miles to a point having a latitude of N. 38° 04' 28"

and a longitude of W. 81° 54' 42"; thence leaving the Washington and Scott District Line N. 60° 00' E. 4.90 miles to a point having a latitude of N. 38° 06' 37" and a longitude of W. 81° 50' 00"; thence East 4.20 miles to a point in the Scott and Peytona Magisterial District Line, having a latitude of N. 38° 06' 37" and a longitude of W. 81° 45' 21"; thence following said District Line in a southerly direction 3.25 miles to a point where the Scott, Peytona, and Sherman Magisterial District Lines meet, having a latitude of N. 38° 04' 23" and a longitude of W. 81° 44' 03"; thence leaving the Peytona Magisterial District Line but following the Scott and Sherman Magisterial District Line in a southwesterly direction 0.85 miles to a point where the Scott, Sherman and Crook Magisterial District Lines meet, having a latitude of N. 38° 03' 44" and a longitude of W. 81° 44' 45"; thence leaving said District Lines N. 76° 30' W. 4.50 miles to the easternmost corner of the Town of Danville; thence S. 25° 00' W. 0.5 miles to the westernmost corner of the Town of Madison; thence S. 30° 45' W. 6.1 miles to the Point of Beginning.

The above described boundary contains 31.74 square miles, serving the communities of Danville, Hopkins, Rock Creek, Foster, Turtle Creek, Turtletown and contiguous areas, all of which lie in Boone County, West Virginia, as shown on a map prepared by J. H. MILAM, INC., Consulting Engineers, Dunbar,

West Virginia, titled Danville Public Service District, District Map, dated May 31, 1973.

All persons residing in or owning or having any interest in property in said proposed Public ServiceDistrict are hereby notified that the County Court of Boone County will conduct a public hearing on Monday, October 22, 1973, at 9:30 o'clock a.m. in the Court House at Madison, West Virginia, at which time and place all interested persons may appear before the County Court and shall have an opportunity to be heard for and against the creation of the proposed Public Service District.

By Order of the County Court this 1st day of October, 1973.

ADOPTED BY THE COUNTY COURT October 1, 1973.

James R. Goodwin
President

Attest:

O. H. Carson

Clerk, Boone County Court

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, to-wit:

I, O. H. Carson, hereby certify that I am the duly qualified and acting Clerk of the County Court of Boone County, West Virginia, and that the foregoing constitutes a true, correct and complete transcript of the proceedings of said County Court as had under date of October 1, 1973, and a resolution and order then adopted relating to the proposed creation of the Danville Public Service District, all as shown by the official records in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of said Court at Madison, West Virginia, this 1st day of October, 1973.

O. H. Carson

County Court Clerk

(SEAL)

STATE OF WEST VIRGINIA, BOONE COUNTY CLERK'S OFFICE, TO-WIT:

I, Ed Cooke, Clerk of the County Commission of Boone County, West Virginia, do hereby certify that the foregoing is a true and correct copy from the records of my said office, as the same appears therein.

Commission Record Book no. 29 Page no. 167

Given under my hand and official seal, at Madison, West Virginia, this 10th day of June, 1993.

Teste: Ed Cooke, Clerk

By: Terry W. Barker, Deputy

OCT 22, 1973

10-22-73

Madison, West Virginia

October 22, 1973

The County Court of Boone County, West Virginia, met in regular session pursuant to law and to the rules of said Court, continued and held at the Courthouse, Madison, West Virginia, at 9:30 o'clock A. M. The meeting was called to order and the roll being called there were present James R. Goodwin, President, presiding, and the following named Commissioners:

J. Robert Rogers and E. E. Lewis

Absent: None

This being the date fixed by prior action of the County Court for conducting the public hearing on the creation of the proposed Danville Public Service District, as contemplated and provided for in a resolution and order adopted by the County Court on October 1, 1973, the president announced that all persons residing in or owning or having any interest in property in such proposed public service district desiring to be heard for or against the creation of said district would be heard and all such interested persons desiring to be heard were given full opportunity.

The County Court then further discussed the creation of said public service district, whereupon James R. Goodwin introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER creating Danville Public Service District in Boone County, West Virginia",

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and

order be adopted. E. E. Lewis seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: J. Robert Rogers
E. E. Lewis and James R. Goodwin
Nay: None

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

E. E. Lewis introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER appointing members to the public service district board of the Danville Public Service District".

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. J. Robert Rogers seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: James R. Goodwin
J. Robert Rogers and E. E. Lewis
Nay: None

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

On motion and vote the meeting adjourned.

James R. Goodwin
President

Attest:

Clerk

STATE OF WEST VIRGINIA

COUNTY OF BOONE

I, O. H. Carson, hereby certify that I am the duly qualified and acting Clerk of the County Court of Boone County, West Virginia, and that the foregoing constitutes a true, correct and complete transcript of the proceedings of said County Court as had under date of October 22, 1973, and resolutions and orders than adopted relating to the creation of Danville Public Service District.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of said Court at Madison, West Virginia, this 22nd day of October, 1973.

O. H. Carson
County Court Clerk

State of West Virginia, Boone County Clerk's Office, to-wit:

I, ALBERT J. GORE, Clerk of the County Commission of Boone County, West Virginia, do hereby certify that the foregoing is a true and correct copy from the records of my said office, as the same appears therein,

Commission Record Book No. 29 Page 208

Given under my hand and official seal, at Madison, West Virginia, this 5 day of Feb. 1986.

Teste: Albert J. Gore Clerk

By: Larry W. Burke Deputy

A RESOLUTION AND ORDER Creating
DANVILLE PUBLIC SERVICE DISTRICT
in Boone County, West Virginia.

WHEREAS, the County Court of Boone County, West Virginia, did heretofore by a resolution and order adopted October 1, 1973, fix a date for a public hearing on the creation of the proposed Danville Public Service District and in and by said resolution and order provide that all persons residing in or owning or having any interest in property in the proposed service district might appear before the County Court at this meeting and have the opportunity to be heard for and against the creation of said district; and

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

WHEREAS, it is now deemed desirable by said County Court to adopt a resolution and order creating said district:

NOW, THEREFORE, Be It and It Is Hereby Resolved and Ordered by the County Court of Boone County, West Virginia, as follows:

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

BEGINNING at a point having a latitude of N. 37° 59' 40" and a longitude of W. 81° 53' 19", also being the northwest corner of the Spruce Fork Public Service District, thence N. 20° 00' W. 2.60 miles to a point in the Boone and Lincoln County Line having a latitude of N. 38° 01' 41" and a longitude of 81° 54' 19"; thence,,leaving the Boone and Lincoln County Line North 1.70 miles to a point in the Washington and Scott Magisterial District Line, having a latitude of N. 38° 03' 12" and a longitude of W. 81° 54' 19"; thence, following said District Line in a northerly direction 2.25 miles to a point having a latitude of N. 38° 04' 28" and a longitude of W. 81° 54' 43"; thence, leaving the Washington and Scott District Line N. 60° 00' E. 4.90 miles to a point having a latitude of N. 38° 06' 37" and a longitude of W. 81° 50' 00"; thence, East 4.20 miles to a point in the Scott and Peytona Magisterial District Line, having a latitude of N. 38° 06' 37" and a longitude of W. 81° 45' 21"; thence, following said District Line in a southerly direction 3.25 miles to a point where the Scott, Peytona, and Sherman Magisterial District Lines meet, having a latitude of N. 38° 04' 23" and a longitude of W. 81° 44' 03"; thence, leaving the Peytona Magisterial District Line but following the Scott and Sherman Magisterial District Line in a southwesterly direction 0.85 miles to a point where the Scott, Sherman and Crook Magisterial District Lines meet, having a latitude of N. 38° 03' 44" and a longitude of W. 81° 44' 45"; thence, leaving said District Lines N. 76° 30' W. 4.50 miles to the easternmost corner of the Town of Danville; thence S. 25° 00' W. 0.5 miles to the westernmost corner of the Town of Madison; thence, S. 30° 45' W. 6.1 miles to the POINT OF BEGINNING. The above described boundary contains 31.74 square miles, serving the communities of Danville, Hopkins, Rock Creek, Foster, Turtle Creek, Turtletown, and contiguous areas, all of which lie in Boone County, West Virginia, as shown on a map prepared by J. H. Milam, Inc., Consulting Engineers, Dunbar, West Virginia.

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

Section 3. That the County Court of Boone County, Virginia, has determined that the territory within Boone County, West Virginia, having the hereintoabove described boundaries, is so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and exten= sion of properties supplying both water and sewerage services within such territory by said public service district will be conducive to the preseeration of public health, comfort and convenience of such area.

ADOPTED BY THE COUNTY COURT OCTOBER 22, 1973.

James K. Goodwin
President

Attest:
Clerk

STATE OF WEST VIRGINIA, BOONE COUNTY CLERK'S OFFICE, TO-WIT:
I, Clerk of the County Commission of Boone County, West Virginia, do hereby certify that the foregoing is a true and correct copy from the records of my said office, as the same appears therein.
Commission Record Book no. 29 Page no. 208
Given under my hand and official seal, at Madison, West Virginia, this 10th day of June, 1993
Teste: Ed Cooke, Clerk
By: Larry Barker, Deputy

Madison, West Virginia

October 1, 1973

The County Court of Boone County, West Virginia, met this day in regular session held this 1st day of October, 1973, at 9:00 o'clock A. M., pursuant to the call of James R. Goodwin, President, and were present James R. Goodwin, President, and the following named Commissioners: J. Robert Rogers and E. E. Lewis.

And were absent: None

At which time, the following matter of business was considered:

> "Consideration of a petition of residents and property owners of parts of Scott District and Washington District, Boone County, West Virginia, asking for the creation of a public service district in the area described in said petition, and to adopt a proposed resolution and enter a proper order fixing a date of hearing on the creation of a public service district for certain areas of Scott District and Washington District, Boone County, West Virginia, as set forth in said petition and to provide for the publication of a notice of such hearing."

E. E. Lewis introduced and caused to be read a proposed resolution and order entitled:

> "A resolution and order fixing a date of hearing on the creation of a public service district for certain areas of Scott District and Washington District,,Boone County, West Virginia, and providing for the publication of a notice of such hearing",

and moved that all rules otherwise requiring deferred consideration be suspended and said proposed resolution and order be adopted. J. Robert Rogers seconded the motion and after due consideration the President put the question on the motion, and the roll being called the following voted:

James R. Goodwin, J. Robert Rogers and E. E. Lewis.

Aye:

Unanimous vote by the County Court Commissioners.

Nay:

Whereupon the President declared the motion duly carried and said resolution and order duly adopted on motion and vote, the meeting was thereupon adjourned.

Clerk

James R. Goodwin
President

Feb 5, 1985
2-5-85

CITY OF MADISON
261 WASHINGTON AVENUE
MADISON, WEST VIRGINIA 25130

MAYOR'S OFFICE
CLERK'S OFFICE
STREET DEPARTMENT
SANITARY BOARD
REFUSE COLLECTION

PHONE
304-369-2762

February 5, 1985

To: Mr. Robert White, Attorney for
Danville Public Service District

Re: Action of the Madison City Council
to enter Danville P.S.D.

The attached copy of the approved minutes of the February 4, 1985 regular meeting of the Madison City Council, relating to the above subject, is a true copy.

Attest:

Ferris Jones, Recorder for the Council.
Ferris Jones.

MINUTES OF THE REGULAR MEETING OF MADISON CITY COUNCIL HELD FEB. 4, 1985

Madison Municipal Council held a regular meeting February 4, 1985 at 7:00 p.m. in the council room. Elective officers present were: Mayor James V. Burgess, Jr., presiding, the Council, Barry Fulton, Sherlock Ball, Bill Bias and Arthur Davis, and the Recorder, Ferris Jones. There were also acting police chief, Carlos Cantley, and supt. of public works, Herman Caudill.

A poll workers list for the special levy election February 26, 1985, presented by the Recorder, was approved as follows, motion by Mr. Davis seconded by Mr. Bias:

Laurine Smoot, Carolyn Smoot, Jessie R. Coleman, Anna Lee Hill, T. W. Cline, Alma R. Hendricks, Pamela L. Roberts, Walter Rhodes, Colleen Workman, Emma Lou Phillips, Wanda Harris, Susan Heater, Jearldean Clay, Sarah Matthews, Julia Rush, Ernestine Pettry, Shirlene Patton, Lucy Smoot, Helen Miller, Delores Smoot, Marcia Sanders, Eileen Ross.

Mrs. Judy Harless of Lincoln Avenue told the Council that she has a letter from the Public Service Commission, allowing for a public hearing concerning the closing of Madison office of West Virginia Water Company. She asked to use the city building for a hearing. Mayor and Council advised that she may use the building, and needs a referee from the Public Service Commission. They asked her to notify the Mayor in order that the meeting may be duly advertised.

Mayor Burgess introduced a discussion regarding the representation and membership of the City of Madison in the Danville Public Service District. He related to the inquiry of Mr. John Romano (who was present) of Regional Intergovernmental Council, of whether a five-man P.S.D. commission is possible, in order to give Madison three members in such a body.

Mr. Romano had determined that such P.S.D. commissions do exist in the state, and that County Commissions determine this. The Mayor said he will be discussing this with the county commission in their Tuesday meeting.

Atty. T. D. Kauffelt, in behalf of the Danville P.S.D. was recognized. He pointed out that Madison is not legally a part of the Danville P.S.D., because there is "no overt order" or record of a public hearing by the County Commission as a result of the City's resolution of November 5, 1976 to join the Danville P.S.D. A discussion followed Kauffelt's request.

Mr. Rick Roberts, an engineer of the Dept. of Natural Resources, said that if Madison does not participate, the $4.3 million EPA grant, and the hope of a 75% federal appropriation to the sewer system, will be passed by, and even a 55% federal funding will become out of reach for Madison. The 75% apportionment is toward $5.746-million of the $6.972-million project, subject to less than $4.3 when the actual project cost is less.

Mayor Burgess stated his reluctance to saddling citizens with 38 years indebtedness on $1.257-million in bonds. Mr. Robert Hayne pointed to, among other things, that the city can keep its own bonding security if it participates in the Danville P.S.D. project.

Mr. Hayne presented the Council a letter from Paul P. Stewart, Jr., chief utilities analyst, Finance and Special Studies Division, Public Service Commission, given in the addendum of these minutes, stating that a special rate for Madison, apportioning a different and reasonable rate to Madison users, is not unusual or unreasonable.

The Council then authorized the Mayor to go to the County Commission to request the establishment of a five-member P.S.D. commission giving Madison three members, motion by Mr. Davis seconded by Mr. Bias, who also suggested that, if this fails, two of three members might be assured the City.

The following Resolution was then adopted, motion by Mr. Bias seconded by Mr. Fulton. RESOLUTION:

RESOLVED, that the Common Council of the City of Madison does consent, pursuant to the provisions of Chapter 16, Article 13-A, Section 2 of the Code of West Virginia as amended, to be included within the boundaries of the Danville Public Service District in Boone County, West Virginia, it being the considered opinion of this Common Council that the participation of the City of Madison in such Public Service District is contributive to the preservation of the public health, comfort and convenience of the Citizens of the City of Madison and the surrounding area.

The question of Curtis Harless, Jr., carrying a gun while in police uniform, but on a youth training program, was raised. 1st Sgt. Carlos Cantley had discussed this with Atty. H. G. Shaffer, III, who questioned the legaility of it. The matter was continued for further inquiry.

Minutes of the last meeting were approved as read, motion by Mr. Bias seconded by Mr. Ball. Expenses list was approved, motion by Mr. Fulton seconded by Mr. Davis.

In an executive session, Mayor Burgess discussed his choice of Jackie Dickson of 477 Kanawha Avenue to serve as permanent chief of police. The Mayor commended Dickson's qualifications, and the Council members commented to their approval of the Mayor's choice.

Mayor and Council chose to remain uninformed on auditors' findings of missing money in the Garbage Collection Dept., until such are made official by the Tax Dept. Then the Council adjourned.

ADDENDUM. Letter from Public Service Commission to Ferris Jones, Recorder, dated February 4, 1985:

"I have reviewed the letter from Appalachian, Usher & Milam and the 'Estimate of Probable Costs' which you sent to me concerning the proposed Danville Public Service District sewer project. (The same information presented to the Council by Mr. Hayne in the January, 1985 meeting).

"Due to the tentative nature of the projected costs, I shall comment only on the estimated relative project cost differences for customers of Madison and Danville. The methodology by which relative costs were assigned to Madison and Danville customers does not appear unreasonable given the estimates at hand. It is my understanding that as proposed Danville PSD would own and operate the treatment plant while the City of Madison would be served as single, albeit much larger, resale customer. This sort of arrangement would not be unusual and should not in itself represent a problem with regard to the proposed project becoming certificated.

"Although this letter should not be construed as Staff support for the sewer project as proposed, I have seen nothing concerning either the general arrangements with regard to ownership and operation of the treatment plant or the estimated relative costs to serve Danville and Madison customers which appear objectionable given the information at hand. If I may be of further assistance, please do not hesitate to let me know.

"Sincerely, /s/ Paul T. Stewart, Jr., Chief Utilities Analyst Finance and Studies Division."

Teresa Jones, Recorder.

3/28/85
March 28, 1985

IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

IN THE MATTER OF THE EXPANSION OF THE DANVILLE PUBLIC SERVICE DISTRICT IN BOONE COUNTY, WEST VIRGINIA

O R D E R

On the 28th day of March, 1985, came Robert L. White, Attorney at Law, representing the Danville Public Service District, which public service district is situate in Boone County, West Virginia, and requested that the said County Commission, on its own motion, expand said service district to encompass the geographic area depicted in the map hereto attached and further described herein, and that pursuant to said request, the said County Commission set its motion down for public hearing. Said geographic area includes within it the City of Madison, and said city must consent to being included within Danville Public Service District before this Commission can so order.

Upon consideration of the representations made by Robert L. White, this Commission is of the opinion that a need exists in the hereinafter described area of Boone County for a public water and sewerage system, that it may best be served by an expansion of the Danville Public Service District, and it is ORDERED, ADJUDGED and DECREED that a hearing be held to consider the expansion of the Danville Public Service District into the herein after described area, which hearing shall be held on the 25th day of April, 1985, at 1:30 PM o'clock A. M., at the Office of the Boone County Commission, Boone County Courthouse, Madison, West Virginia. Said area of expansion is bounded and described as follows:

BEGINNING at a point in the original boundary of the Danville Public Service District, said point having a latitude of N 38° 00' 00" and a longitude of W 81° 53' 01";

THENCE, N 30° 45' E., 5.70 miles with the original boundary of the Danville Public Service District to a point in the corporate boundary of the City of Madison;

THENCE, N 25° 00' E., 0.50 miles continuing with the original boundary of the Danville Public Service District and the corporate boundary of City of Madison to a point;

THENCE, S 76° 30' E., 4.30 miles, leaving the corporate boundary of the City of Madison and continuing with the original boundary of the Danville Public Service District to a point having a latitude of N 38° 03' 48" and a longitude of W 81° 45' 00";

THENCE, South 4.37 miles, leaving the original boundary of the Danville Public Service District to a point having a latitude of N 38° 00' 00" and a longitude of W 81° 45' 00";

THENCE, West 7.30 miles to the point of BEGINNING, containing an area of 28.69 square miles with the Washington and Crook Magisterial Districts, Boone County, West Virginia, as shown on a map dated March, 1985, and prepared by APPALACHIAN USHER & MILAM INC., CONSULTING ENGINEERS, Dunbar, West Virginia.

It is further ORDERED that this Commission publish a notice as provided by Article 13A of Chapter 16 of the West Virginia Code of 1931 as amended.

ENTERED this 27th day of March, 1985.

THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA.

Commissioner

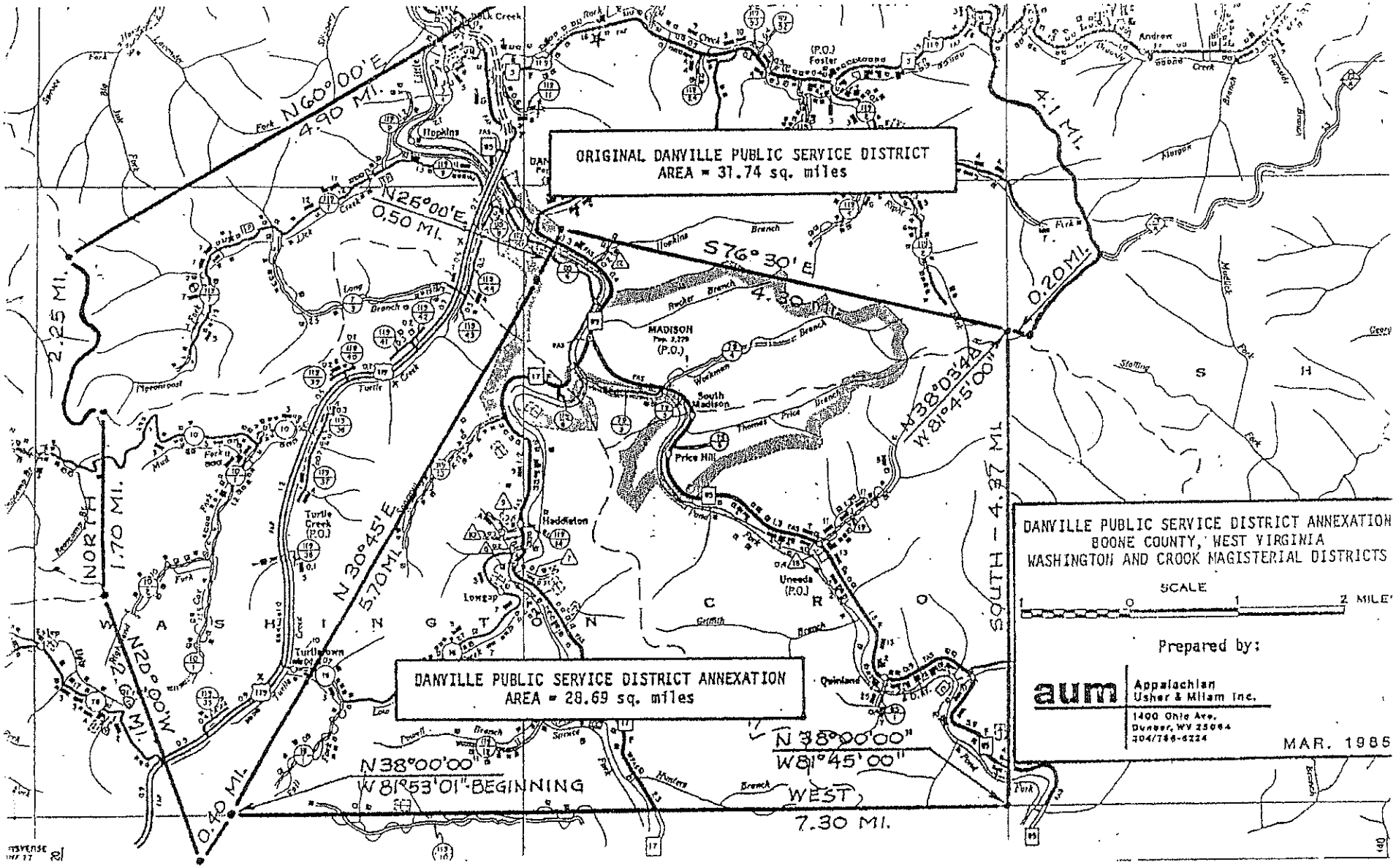
Commissioner

T. J. Cook
Commissioner, President

(SEAL)

ATTEST:

Albert J. Gore
Clerk of the County Commission
of Boone County, West Virginia


ORIGINAL DANVILLE PUBLIC SERVICE DISTRICT
AREA = 31.74 sq. miles
DANVILLE PUBLIC SERVICE DISTRICT ANNEXATION
AREA = 28.69 sq. miles
DANVILLE PUBLIC SERVICE DISTRICT ANNEXATION
BOONE COUNTY, WEST VIRGINIA
WASHINGTON AND CROOK MAGISTERIAL DISTRICTS
SCALE
1 0 1 2 MILES
Prepared by:
aum
Appalachian Usher & Milam Inc.
1400 Ohio Ave.
Dunbar, WV 25064
304/766-6224
MAR. 1985
N60°00'E
4.90 MI.
N26°00'E
0.50 MI.
S76°30'E
4.30 MI.
4.1 MI.
0.20 MI.
N38°03'48"
W81°45'00"
SOUTH - 4.37 MI.
N38°00'00"
W81°45'00"
WEST
7.30 MI.
N38°00'00"
W81°53'01" BEGINNING
0.40 MI.
N20°00'W
2.60 MI.
NORTH
1.70 MI.
2.25 MI.
N30°45'E
5.70 MI.
MADISON
(P.O.)
South Madison
Price Hill
Haddleton
Uneeda
(P.O.)
Quinland
Turtle Creek
(P.O.)
Turtletown
Hopkins
Foster
(P.O.)
Andrew
Pleasantdale
Long Branch
Turtle Creek
Hopkins Branch
Rocker Branch
Workman Branch
Thomas Price Branch
Grimth Branch
Hunters Branch
Powell Branch
Spruce Fork
Mud Fork
Little Fork
Lick Creek
Morgan Branch
Stalling Fork
Mudlick Fork
Pond Fork
Lowgap
W A S H I N G T O N
C R O
S H

NOTICE OF PUBLIC HEARING ON EXPANSION OF
DANVILLE PUBLIC SERVICE DISTRICT

Notice is hereby given that the County Commission of Boone County, on its own motion, is to consider the expansion of the Danville Public Service District into hereinafter described areas of Scott, Washington and Crook Districts of Boone County, West Virginia, for the purpose of constructing or acquiring by purchase or otherwise and the maintenance, operation, improvement and extension of public service properties supplying water and sewerage services within the said district and also, outside the said district to the extent permitted by Law; to be named "Danville Public Service District," and having the following boundaries:

BEGINNING at a point in the original boundary of the Danville Public Service District, said point having a latitude of N 38° 00' 00" and a longitude of W 81° 53' 01";

THENCE, N 30° 45' E., 5.70 miles with the original boundary of the Danville Public Service District to a point in the corporate boundary of the City of Madison;

THENCE, N 25° 00' E., 0.50 miles continuing with the original boundary of the Danville Public Service District and the corporate boundary of City of Madison to a point;

THENCE, S 76° 30' E., 4.30 miles, leaving the corporate boundary of the City of Madison and continuing with the original boundary of the Danville Public Service District to a point having a latitude of N 38° 03' 48" and a longitude of W 81° 45' 00";

THENCE, South 4.37 miles, leaving the original boundary of the Danville Public Service District to a point having a latitude of N 38° 00' 00" and a longitude of W 81° 45' 00";

THENCE, West 7.30 miles to the point of BEGINNING, containing an area of 28.69 square miles with the Washington and Crook Magisterial Districts, Boone County, West Virginia, as shown on a map dated March, 1985, and prepared by APPALACHIAN USHER & MILAM INC., CONSULTING ENGINEERS, Dunbar, West Virginia.

The above described boundary contains 28.69 square miles and includes the City of Madison, and the communities of Uneeda, Quinland, Haddleton, Low Gap and Coal Bottom in addition to the communities of Danville, Hopkins, Rock Creek, Foster, Turtle Creek, Turtle Town, now included within Danville Public Service District as it is presently constituted, all of which lies in Boone County, West Virginia and is shown on two maps, one prepared by J. H. Milam, Inc., consulting engineers, which is entitled Danville Public Service District and is dated May 31, 1973, and one prepared by Appalachian Usher & Milam Inc., consulting engineers, which is entitled Danville Public Service District Annexation, Boone County, West Virginia, Washington and Crook Magisterial Districts, dated March, 1985. These maps may be seen upon request to Robert L. White, Attorney at Law, whose address is 63 Avenue C, Madison, West Virginia 25130.

All persons residing in or owning or having any interest in property in said district as it is presently constituted or as it is to be expanded are hereby notified that the County Commission of Boone County will conduct a public hearing on Thursday, April 25, 1985, at the Courthouse at Madison, West Virginia, at which time and place all interested persons may appear before the County Commission and shall have an opportunity to be heard for and against the expansion of the said Danville Public Service District.

By Order of the County Commission this 25th day of March, 1985.

Adopted by the County Commission of Boone County, West Virginia, March, 1985.

STATE OF WEST VIRGINIA, BOONE COUNTY CLERK'S OFFICE, TO-WIT:
I, Ed Cooke, Clerk of the County Commission of said County, West Virginia, do hereby certify that the foregoing is a true and correct copy from the records of my said office, as the same appears therein.
Given under my hand and official seal, at Madison, West Virginia, this 10th day of June, 1993.
Test: Ed Cooke, Clerk
By: Tony K. Barker, Deputy

President

April 25, 1985

4-25-85

Madison, West Virginia

April 25, 1985

The County Commission of Boone County, West Virginia, met in regular session pursuant to law and to the rules of said Commission, continued and held at the Courthouse, Madison, West Virginia, at 1:30 P.M. The meeting was called to order and the roll being called there were present E. D. Cooke, President, presiding, and the following named Commissioners:

Clarence E. Hall, II and J. M. (Mickey) Protan

Absent: None

This being the date fixed by prior action of the County Commission for conducting the public hearing on the expansion of the proposed Danville Public Service District, as contemplated and provided for in a resolution and order adopted by the County Commission on March 28, 1985, the president announced that all persons residing in or owning or having any interest in property in such proposed public service district desiring to be heard for or against the expansion of said district would be heard and all such interested persons desiring to be heard were given full opportunity.

The County Commission then further discussed the expansion of said public service district, whereupon E. D. Cooke introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER expanding Danville Public Service District in Boone County, West Virginia,"

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Clarence E. Hall, II seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Clarence E. Hall, II
C. E. Cooke
J. M. (Mickey) Protan

Nay: None

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

On motion and vote the meeting adjourned.

President

Attest:

Clerk

STATE OF WEST VIRGINIA

COUNTY OF BOONE, to-wit:

I, Albert J. Gore, hereby certify that I am the duly qualified and acting Clerk of the County Commission of Boone County, West Virginia, and that the foregoing constitutes a true, correct and complete transcript of the proceedings of said County Commission as had under date of April 25, 1985, and resolution and order then adopted relating to the expansion of Danville Public Service District.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of said Court at Madison, West Virginia, this 25th day of April, 1985.

Albert J. Gore
Clerk, Boone County Commission

STATE OF WEST VIRGINIA, BOONE COUNTY CLERK'S OFFICE, TO-WIT:
I, Clerk of the County Commission of Boone County, West Virginia, hereby certify that the foregoing is a true and correct copy from the records of said office, as the same appears therein.
Commission Record Book no. 48 Page no. 209
Given under my hand and official seal, at Madison, West Virginia, this 10th day of June, 199
Test: Ed Cooke, Clerk
By: Sally W. Parker, Deputy

A RESOLUTION AND ORDER EXPANDING
DANVILLE PUBLIC SERVICE DISTRICT
in Boone County, West Virginia.

WHEREAS, the County Commission of Boone County, West Virginia, did heretofore by a resolution and order adopted March 28, 1985, fix a date for a public hearing on the expansion of Danville Public Service District and in and by said resolution and order provide that all persons residing in or owning or having any interest in property in the proposed service district might appear before the County Commission at this meeting and have the opportunity to be heard for and against the creation of said district; and

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

WHEREAS, the City of Madison did, by appropriate resolution, agree and consent to its expanded territory being included within said district; and

WHEREAS, it is now deemed desirable by said County Commission to adopt a resolution and order expanding said district:

NOW, THEREFORE, Be It and It Is Hereby Resolved and Ordered by the County Commission of Boone County, West Virginia, as follows:

Section 1. That the public service district within Boone County, known as Danville Public Service District, created by the County Court of Boone County, West Virginia,

by order of October 22, 1973, is hereby expanded and said district shall have the following area included as a part of said district, in addition to the territory included in the district as set out in said order of October 22, 1973:

BEGINNING at a point in the original boundary of the Danville Public Service District, said point having a latitude of N 38° 00' 00" and a longitude of W 81° 53' 01";

THENCE, N 30° 45' E., 5.70 miles with the original boundary of the Danville Public Service District to a point in the corporate boundary of the City of Madison;

THENCE, N 25° 00' E., 0.50 miles continuing with the original boundary of the Danville Public Service District and the corporate boundary of City of Madison to a point;

THENCE, S 76° 30' E., 4.30 miles, leaving the corporate boundary of the City of Madison and continuing with the original boundary of the Danville Public Service District to a point having a latitude of N 38° 03' 48" and a longitude of W 81° 45' 00";

THENCE, South 4.37 miles, leaving the original boundary of the Danville Public Service District to a point having a latitude of N 38° 00' 00" and a longitude of W 81° 45' 00";

THENCE, West 7.30 miles to the point of BEGINNING, containing an area of 28.69 square miles with the Washington and Crook Magisterial Districts, Boone County, West Virginia, as shown on a map dated March, 1985, and prepared by APPALACHIAN USHER & MILAM INC., CONSULTING ENGINEERS, Dunbar, West Virginia.

Section 2. That said public service district so expanded shall continue under the name and corporate title of "Danville Public Service District" and shall continue as a public corporation
and political subdivision of the State of West Virginia having all the rights and powers conferred on public service districts by the laws of the State of West Virginia and particularly Article 13A of Chapter 16 of the West Virginia Code.

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

ADOPTED BY THE COUNTY COMMISSION APRIL 25, 1985.

E. Cook
President

Attest:

Albert J. Gore
Clerk

March 9, 1998

BEFORE THE COUNTY COMMISSION OF BOONE COUNTY

**A RESOLUTION AND ORDER PROPOSING THE ENLARGEMENT OF DANVILLE PUBLIC SERVICE DISTRICT AND THE MERGER OF COAL RIVER PUBLIC SERVICE DISTRICT, SPRUCE FORK PUBLIC SERVICE DISTRICT, AND VAN PUBLIC SERVICE DISTRICT INTO DANVILLE PUBLIC SERVICE DISTRICT FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, OPERATING, MAINTAINING AND IMPROVING A PUBLIC WATER SYSTEM OR PUBLIC SEWERAGE SYSTEM, OR BOTH, FOR THE RESIDENTS OF THE SERVICE AREAS OF THESE UNINCORPORATED COMMUNITIES OF BOONE COUNTY AND FIXING A DATE FOR HEARING ON THE PROPOSED MERGER AND PROVIDING FOR THE PUBLICATION OF NOTICE OF SUCH HEARING**

WHEREAS, the County Commission of Boone County (the "Commission") deems it necessary and desirable to enlarge and merge, where practicable, the public service districts in Boone County to provide both better and more cost-effective service to the residents of the County;

WHEREAS, pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code, the Commission is empowered to, upon its own motion by order duly adopted, propose the enlargement and merger of public service districts in order to preserve the public health, comfort and convenience of the areas with the public service districts;

WHEREAS, the Commission, after considerable deliberation, has decided that the proposed enlargement of Danville Public Service District and merger of Coal River Public Service District, Spruce Fork Public Service District, and Van Public Service District into Danville Public Service District (the "Districts"), the Districts being located within Boone County and a portion of Logan County, subject to the approval of the Public Service Commission of West Virginia, is necessary for the preservation of the public health, comfort and convenience for the areas presently served by the said Districts.

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

1. That the Commission of Boone County, West Virginia, upon its own motion, subject to the approval of the Public Service Commission of West Virginia, proposed the enlargement of Danville Public Service District and merger of the Districts. Following the enlargement and merger, the area included within Danville Public Service District shall be particularly defined as follows:

## TRACT 1 OF DANVILLE PUBLIC SERVICE DISTRICT

Beginning on a point in the Boone and Kanawha County line where it intersects the northern boundary line of Boone-Raleigh PSD at a latitude of N38°04'00" and a longitude of W81°31'05".

Thence leaving the Boone-Raleigh PSD boundary line in a north-western direction following the meanders of the Boone and Kanawha County line to a point where the Boone, Kanawha and Lincoln County lines meet.

Thence following the meanders of the Boone and Lincoln County line in a southern direction to a point where the Boone, Lincoln and Logan County lines meet.

Thence following the meanders of the Boone and Logan County line in a southern direction to a point on the county line having a latitude of N37°56'48" and a longitude of W81°49'55".

Thence south leaving the Boone and Logan County line 0.7 miles into Logan County.

Thence east to a point that intersects the Boone and Logan County line. This area contains 0.23 square miles in Logan County.

Thence following the meanders of the Boone and Logan County line in a southern direction to a point where the Boone, Logan and Wyoming Counties meet.

Thence following the meanders of the Boone and Wyoming County line to a point where Boone, Wyoming and Raleigh County lines meet.

Thence following the meanders of the Boone and Raleigh County line in a northern direction to a point where Boone-Raleigh PSD's southern most corner intersects the Boone and Raleigh County line at a latitude of N37°58'12" and a longitude of W81°32'12".

Thence leaving the Boone and Raleigh County line and following the Boone-Raleigh PSD boundary, N40°00' W 3.85 miles to a point having a latitude N38°00' 46 and a longitude W81°35'00".

Thence north following Boone-Raleigh PSD boundary to a point having a latitude of N38°02'00" and a longitude of W81°35'00".

Thence east 1.8 miles following the Boone-Raleigh PSD boundary to a point having a latitude of N38°02'00" and a longitude of W81°33'00".

Thence north 2.3 miles following the Boone-Raleigh PSD boundary to a point having a latitude of N38°04'00" and a longitude of W81°33'00".

Thence east along the northern most boundary line of Boone-Raleigh PSD to the point of beginning.

TRACT 2 OF DANVILLE PUBLIC SERVICE DISTRICT

Beginning on a point in the Boone and Raleigh County line also the south east corner of Boone-Raleigh PSD at a latitude of N37°59'04" and a longitude of W81°30'00".

Thence leaving the Boone-Raleigh PSD boundary corner in an easterly direction following the meanders of the Boone and Raleigh County line to a point where Boone, Raleigh and Kanawha County lines meet.

Thence following the meanders of the Boone and Kanawha County line to a point on the county line having a latitude of N38°03'42" and a longitude of W81°30'00" in the eastern most line of Boone-Raleigh PSD boundary.

Thence leaving the Boone and Kanawha County line south along the Boone-Raleigh PSD boundary line to the place of beginning.

2. That upon the enlargement of Danville Public Service District and merger of the Districts, Danville Public Service District shall be the surviving entity and the Commission shall have jurisdiction over the newly enlarged and merged district for all purposes, specifically including, but not limited to, appointing the members of the public service board of the District.

3. That on the 6th day of April, 1998, being a day in the regular session of this commission, at the hour of eleven o'clock a.m. prevailing time, the Commission shall meet in Suite 300 of Boone Co. Courthouse Annex at 206 Court Street, Madison, West Virginia, for the purpose of conducting a public hearing on the proposed enlargement of Danville Public Service District and merger of the Districts, at which time and place all persons residing in or owning or having any interest in property in the territory of the Districts may appear before this Commission and shall be provided an opportunity to be heard for or against the proposal.

4. That the Clerk of the Commission shall cause notice of the hearing and a description of the territory of the Districts to be published in the Coal Valley News/ Hometown News newspapers of general circulation published in Boone County, as a Class I legal advertisement in compliance with the provisions of Chapter 59, Article 3 of the Official Code of West Virginia of 1931, as amended, at least ten (10) days prior to the hearing.

5. That the Clerk of the Commission shall notify the Clerk of the County Commission of Logan County, West Virginia, to cause notice of the hearing and a description of the territory of the Districts to be published in a newspaper of general circulation published in the portion of Logan County affected by the merger of the Districts, as a Class I legal advertisement in compliance with the provisions of Chapter 59, Article 3 of the official Code of West Virginia of 1931, as amended, at least ten (10) days prior to the hearing.

6. That the Clerk of the Commission shall cause a copy of this Resolution and Order to be filed with the Executive Secretary of the Public Service Commission of West Virginia not less than ten (10) days prior to the hearing set forth herein.

By the Order of the County Commission of Boone County this 9th day of March, 1998.

COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

J. M. Mickey Porter
PRESIDENT

Bruce Fulton
COMMISSIONER

Gordon Ernstall
COMMISSIONER

ATTEST:

Ef Lowe
CLERK

CHASFS3:115214

April 6, 1998

BEFORE THE COUNTY COMMISSION OF BOONE COUNTY

A RESOLUTION AND ORDER ENLARGING DANVILLE PUBLIC SERVICE DISTRICT AND MERGING COAL RIVER PUBLIC SERVICE DISTRICT, SPRUCE FORK PUBLIC SERVICE DISTRICT, AND VAN PUBLIC SERVICE DISTRICT INTO DANVILLE PUBLIC SERVICE DISTRICT

WHEREAS, the County Commission of Boone County, West Virginia, did heretofore, by Resolution and Order adopted on March 9, 1998, propose the enlargement of Danville Public Service District and merger of Coal River Public Service District, Spruce Fork Public Service District, and Van Public Service District into Danville Public Service District (the "Districts");

WHEREAS, by said March 9, 1998, Resolution and Order, the County Commission of Boone County, West Virginia, did set a hearing on the proposed enlargement of Danville Public Service District and merger of the Districts to be held on April 6, 1998; filed with the Clerk of the County Commission of Boone County a copy of the Resolution and Order; notified the Clerk of the County Commission of Logan County of the date, time, location, and purpose of said hearing; required notice of said hearing be given by Class I legal publication in Boone County and required the Clerk of the County Commission of Boone County to cause a copy of the Resolution and Order to be filed with the Executive Secretary of the Public Service Commission;

WHEREAS, notice of this April 6, 1998, hearing has been given in the manner provided and required by said Resolution and Order and by West Virginia Code § 16-13A-2, and all interested parties have been afforded an opportunity of being heard for and against the enlargement of Danville Public Service District and merger of the Districts, but no written protest has been filed by the requisite number of qualified voters registered and residing within the existing boundaries of the Districts, and said County Commission has given due consideration to all matters for which such hearing was offered; and

WHEREAS, it is now deemed desirous by said County Commission to adopt a Resolution and Order, subject to the approval of the Public Service Commission of West Virginia, enlarging Danville Public Service District and merging the Districts for the purpose of providing water services and for the preservation of the public health, comfort, and convenience for the areas presently being served with water services by the Districts.

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

1. That the County Commission of Boone County, West Virginia, upon its own motion, subject to the approval of the Public Service Commission of West Virginia, enlarges Danville Public Service District and merges Coal River Public Service District,

Spruce Fork Public Service District and Van Public Service District into Danville Public Service District.

The service area of the Danville Public Service District after the enlargement and merger shall be particularly defined as follows:

TRACT 1 OF DANVILLE PUBLIC SERVICE DISTRICT

Beginning on a point in the Boone and Kanawha County line where it intersects the northern boundary line of Boone-Raleigh PSD at a latitude of N38°04'00" and a longitude of W81°31'05".

Thence leaving the Boone-Raleigh PSD boundary line in a north-western direction following the meanders of the Boone and Kanawha County line to a point where the Boone, Kanawha and Lincoln County lines meet.

Thence following the meanders of the Boone and Lincoln County line in a southern direction to a point where the Boone, Lincoln and Logan County lines meet.

Thence following the meanders of the Boone and Logan County line in a southern direction to a point on the county line having a latitude of N37°56'48" and a longitude of W81°49'55".

Thence south leaving the Boone and Logan County line 0.7 miles into Logan County.

Thence east to a point that intersects the Boone and Logan County line. This area contains 0.23 square miles in Logan County.

Thence following the meanders of the Boone and Logan County line in a southern direction to a point where the Boone, Logan and Wyoming Counties meet.

Thence following the meanders of the Boone and Wyoming County line to a point where Boone, Wyoming and Raleigh County lines meet.

Thence following the meanders of the Boone and Raleigh County line in a northern direction to a point where Boone-Raleigh PSD's southern most corner intersects the Boone and Raleigh County line at a latitude of N37°58'12" and a longitude of W81°32'12".

Thence leaving the Boone and Raleigh County line and following the Boone-Raleigh PSD boundary, N40°00' W 3.85 miles to a point having a latitude N38°00' 46 and a longitude W81°35'00".

Thence north following Boone-Raleigh PSD boundary to a point having a latitude of N38°02'00" and a longitude of W81°35'00".

Thence east 1.8 miles following the Boone-Raleigh PSD boundary to a point having a latitude of N38°02'00" and a longitude of W81°33'00".

Thence north 2.3 miles following the Boone-Raleigh PSD boundary to a point having a latitude of N38°04'00" and a longitude of W81°33'00".

Thence east along the northern most boundary line of Boone-Raleigh PSD to the point of beginning.

TRACT 2 OF DANVILLE PUBLIC SERVICE DISTRICT

Beginning on a point in the Boone and Raleigh County line also the south east corner of Boone-Raleigh PSD at a latitude of N37°59'04" and a longitude of W81°30'00".

Thence leaving the Boone-Raleigh PSD boundary corner in an easterly direction following the meanders of the Boone and Raleigh County line to a point where Boone, Raleigh and Kanawha County lines meet.

Thence following the meanders of the Boone and Kanawha County line to a point on the county line having a latitude of N38°03'42" and a longitude of W81°30'00" in the eastern most line of Boone-Raleigh PSD boundary.

Thence leaving the Boone and Kanawha County line south along the Boone-Raleigh PSD boundary line to the place of beginning.

2. That the newly expanded and merged Danville Public Service District shall provide only water services to the areas contained within its boundaries. The original Danville Public Service District, Coal River Public Service District, Spruce Fork Public Service District and Van Public Service District shall remain intact as separate public corporations and political subdivisions for the purpose of providing sewer services to the respective areas served by those districts.

3. That upon approval of the expansion or merger by the West Virginia Public Service Commission and in order to avoid confusion with the existing Danville Public Service District providing sewer services, the newly expanded and merged Danville Public Service District shall be renamed "Boone County Public Service District." The Commission shall appoint a five member board to govern Boone County Public Service District in accordance with West Virginia Code § 16-13A-3.

4. That the County Commission of Boone County shall have jurisdiction over the newly enlarged and merged district for all purposes, specifically including, but not limited to, appointing members of the public service board of the District.

5. That the Clerk of the County Commission of Boone County shall cause a copy of this Resolution and Order to be filed with the Clerk of the County Commission of Logan County to be retained in its office.

6. That the Clerk of the County Commission of Boone County shall cause a copy of this Resolution and Order to be filed with the Executive Secretary of the Public Service Commission of West Virginia not less than ten (10) days following the adoption hereof.

Entered into the permanent record of Boone County, West Virginia, this 6TH. day of April, 1998.

COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

PRESIDENT

COMMISSIONER

COMMISSIONER

ATTEST:

CLERK

CHASFS3:115216

**BEFORE THE COUNTY COMMISSION OF BOONE COUNTY**

**A RESOLUTION AND ORDER SETTING THE EFFECTIVE DATE FOR THE ENLARGEMENT OF DANVILLE PUBLIC SERVICE DISTRICT, THE MERGER OF COAL RIVER PUBLIC SERVICE DISTRICT, SPRUCE FORK PUBLIC SERVICE DISTRICT AND VAN PUBLIC SERVICE DISTRICT INTO DANVILLE PUBLIC SERVICE DISTRICT, AND THE RENAMING OF THE ENLARGED AND MERGED ENTITY AS "BOONE COUNTY PUBLIC SERVICE DISTRICT"; CONFIRMING PRIOR RESOLUTIONS AND ORDERS WITH RESPECT TO SAID ENLARGEMENT, MERGER AND RENAMING; AND PROVIDING FOR THE MEMBERSHIP AND TERMS OF OFFICE OF THE PUBLIC SERVICE BOARD OF BOONE COUNTY PUBLIC SERVICE DISTRICT.**

WHEREAS, the County Commission of Boone County, West Virginia (the "County Commission") adopted a Resolution and Order on March 9, 1998 (the "March 9, 1998 Order"), proposing (i) the enlargement of Danville Public Service District and (ii) the merger of Coal River Public Service District, Spruce Fork Public Service District, and Van Public Service District (collectively, the "Districts") into Danville Public Service District;

WHEREAS, after publishing legal notice of and holding a public hearing on the proposed enlargement and merger, the County Commission adopted a Resolution and Order on April 6, 1998 (the "April 4, 1998 Order," and together with the March 9, 1998 Order, the "Prior Orders"), which, subject to the approval of the Public Service Commission of West Virginia (the "PSC"), enlarged the territory of Danville Public Service District, merged the Districts with Danville Public Service District and provided that Danville Public Service District would have all the territory of the Districts for purposes of providing water service, provided that Danville Public Service District and the Districts were to remain intact as separate public corporations and political subdivisions for the purpose of providing sewer services to their respective territories, renamed the newly expanded and merged Danville Public Service District as "Boone County Public Service District," and authorized the appointment by the County Commission of a five-member board to govern Boone County Public Service District in accordance with W. Va. Code § 16-13A-3;

WHEREAS, on April 16, 1998, the County Commission, pursuant to the April 6, 1998 Order, petitioned the PSC for approval to enlarge Danville Public Service District, to merge the Districts into the enlarged Danville Public Service District for water service, and to rename Danville Public Service District as "Boone County Public Service District";

WHEREAS, in Commission Orders dated June 18, 1998, and August 28, 1998, the PSC granted the County Commission's petition described above;

WHEREAS, the County Commission desires to set an effective date for the enlargement, merger, and name change described above; to clarify certain issues concerning the continued existence of the Districts with respect to sewer service; to clarify the territory of Boone County Public Service District for purposes of water service; to reaffirm certain earlier appointments by the County Commission to the Public Service Board of Boone County Public Service District and to establish a new effective date for one of those appointments; and to appoint an additional member to the Public Service Board of Boone County Public Service District and to establish that member's term of office.

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

1. The effective date of the enlargement of Danville Public Service District, through the merger of the territory of the Districts with Danville Public Service District, the transfer of the water service assets of Coal River Public Service District and Van Public Service District with Danville Public Service District, and the renaming of the newly-enlarged Danville Public Service District as "Boone County Public Service District" for purposes of providing water service, shall be the earlier of (i) April 28, 1999 or (ii) in the event that the consent of the United States Department of Commerce, Economic Development Administration, to the merger has not been received by that date, on any date within thirty days of April 28, 1999 on which such consent has been received (the "Effective Date"). As soon as possible after the Effective Date, the Public Service Board of the Boone County Public Service District shall promptly inform the County Commission of the actual Effective Date.

2. Pursuant to the April 6, 1998 Order, the County Commission hereby confirms that both the existing Danville Public Service District and the Districts shall remain intact for purposes of providing sewer services and shall retain any and all sewer facilities they now own and sewer customers they now serve. It is anticipated that the County Commission's Resolution and Order dated January 11, 1999 to consolidate the sewer authority of Coal River Public Service District, Van Public Service District and Danville Public Service District with Boone County Public Service District will be approved by the PSC in Boone County Commission, PSC Case No. 99-0108-PWD-PC (the "Proposed Sewer Consolidation").

3. The County Commission clarifies and confirms that the County Commission's use of the term "merger" in the Prior Orders referred to the aggregation of the territories of Danville Public Service District and the Districts for purposes of water service. This "merger" was and is intended to create an expanded public service district for water services only to be named "Boone County Public Service District" that is separate and distinct from Danville Public Service District, the existence of which will continue for the purpose of providing sewer service within its existing territory unless and until the Proposed Sewer Consolidation is approved by the PSC. The term "merger" in the Prior Orders was not used in its strict technical and legal sense, which would connote the joining of several

8/28/98

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 28th day of August, 1998.

CASE NO. 98-0464-PWD-PC

BOONE COUNTY COMMISSION
Petition for approval of enlargement of the Danville Public Service District and merger of Coal River Public Service District, Spruce Fork Public Service District, and Van Public Service District into the Danville Public Service District.

COMMISSION ORDER

By Order issued June 18, 1998, the Public Service Commission authorized the enlargement of the Danville Public Service District and the merger of the Coal River, Spruce Fork and Van Public Service Districts into the enlarged Danville Public Service District.

On July 20, 1998, Commission Staff filed a Further Initial Joint Staff Memorandum requesting that the Commission reopen this proceeding for the purpose of clarifying that the District surviving the above described enlargement and mergers shall be named Boone County Public Service District. Staff explained that the Boone County Commission's original petition requested that the surviving entity of the merged Districts be named Boone County Public Service District. Staff noted that the Commission's June 18, 1998 Order did not address the County Commission's request. Staff's memorandum was docketed by the Commission's Executive Secretary as a petition to reopen this proceeding.

IT IS THEREFORE ORDERED that Commission Staff's petition to reopen this proceeding is hereby granted.

IT IS FURTHER ORDERED that the enlarged Public Service District resulting from the merger of the Coal River, Spruce Fork and Van Public Service Districts into the enlarged Danville Public Service District, shall be named the Boone County Public Service District.

IT IS FURTHER ORDERED that upon entry hereof this proceeding shall be dismissed from the Commission's docket of active cases.

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

**A True Copy, Teste:**

Sandra Squire

**Sandra Squire**
**Executive Secretary**

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 18th day of June, 1998.

CASE NO. 98-0464-PWD-PC

BOONE COUNTY COMMISSION
Petition for approval of enlargement of the Danville Public Service District and merger of Coal River Public Service District, Spruce Fork Public Service District, and Van Public Service District into the Danville Public Service District.

## COMMISSION ORDER

On April 16, 1998, the Boone County Commission petitioned for approval of the enlargement of the Danville Public Service District and the merger of the Coal River, Spruce Fork and Van Public Service Districts into the enlarged Danville PSD for water service. Part of Spruce Fork's service territory is in Logan County, West Virginia.

Boone County conducted a public hearing on April 6, 1998, on the proposal to enlarge Danville PSD and merge the districts into the enlarged Danville PSD, and there were no protests. The Logan County Commission adopted a resolution consenting to the merger. On April 6, 1998, after the public hearing, Boone County voted to enlarge and merge the districts.

On June 15, 1998, the Public Service Commission conducted a public hearing in Madison on the proposal, as required by W. Va. Code § 16-13A-2(f). Notice of the PSC's hearing was published in both Logan and Boone counties. There were no protests. At the public hearing, Commission Staff (Staff) recommended that the petition be approved. See Final Joint Staff Memorandum.

## DISCUSSION

W. Va. Code §16-13A-2(f), provides, in pertinent part, as follows:
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.

Having considered this matter, the Commission finds that it is in the best interests of the public to enlarge the Danville PSD and to merge the Coal River, Spruce Fork and Van PSDs into

the enlarged Danville PSD for water service. Accordingly, Boone County's petition should be approved.

## FINDINGS OF FACT

1. On April 6, 1998, following a public hearing, Boone County voted to enlarge Danville PSD and merge the Coal River, Spruce Fork and Van PSDs into the enlarged Danville PSD.

2. On April 16, 1998, Boone County petitioned the Public Service Commission for approval of the enlargement of the Danville PSD and the merger of the Coal River, Spruce Fork and Van PSDs into the enlarged Danville PSD for water service.

3. On June 15, 1998, the Public Service Commission conducted a public hearing in Madison on the proposal, as required by W. Va. Code § 16-13A-2(f). There were no protests. At the public hearing, Staff recommended that the petition be approved. See Final Joint Staff Memorandum.

## CONCLUSION OF LAW

It is in the best interests of the public to enlarge the Danville PSD and to merge the Coal River, Spruce Fork and Van PSDs into the enlarged Danville PSD for water service. Accordingly, Boone County's petition should be approved, pursuant to W. Va. Code §16-13A-2(f).

## ORDER

IT IS THEREFORE ORDERED that Boone County's petition for approval of the enlargement of the Danville PSD and to merger of the Coal River, Spruce Fork and Van PSDs into the enlarged Danville PSD for water service is granted.

IT IS FURTHER ORDERED that this proceeding shall be removed from the Commission's docket of active cases.

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

A True Copy, Teste:

Sandra Squire

ARC

Sandra Squire
Executive Secretary



PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

12/7/98
Dec 7, 1998

BEFORE THE COUNTY COMMISSION OF BOONE COUNTY

A RESOLUTION AND ORDER PROPOSING THE
CONSOLIDATION OF THE
COAL RIVER PUBLIC SERVICE DISTRICT AND
VAN PUBLIC SERVICE DISTRICT AND
DANVILLE PUBLIC SERVICE DISTRICT
WITH THE BOONE COUNTY PUBLIC SERVICE DISTRICT

WHEREAS, the County Commission of Boone County desires to facilitate the expansion of development in Boone County; and

WHEREAS, West Virginia Code §16-13A-2 provides that a county commission may consolidate public service districts in order to achieve efficiency of operations; and

WHEREAS, it is now deemed desirous by said County Commission to adopt a resolution and order proposing the consolidation of the sewer authority of the Coal River Public Service District and Van Public Service District and Danville Public Service District with the Boone County Public Service District for provision of water and sewer service.

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

1. That the County Commission of Boone County, West Virginia, upon its own motion, proposes the consolidation of the sewer authority of the Coal River Public Service District and Van Public Service District and Danville Public Service District with the Boone County Public Service District, located within Boone County, West Virginia, for the provision of water and sewer service.

2. That the County Commission of Boone County, West Virginia, upon its

own motion, proposes through the consolidation of the Coal River Public Service District and Van Public Service District and Danville Public Service District to expand the boundaries of the existing sewer public service districts and to include all the area of Boone County except the area presently served by the Boone-Raleigh Public Service District.

3. That the County Commission of Boone County, West Virginia, upon its own motion, proposes through said consolidation, the resulting expansion of the boundaries of the Boone County Public Service District, and to include within its boundaries all the area of Boone County, West Virginia, which is not currently contained within the boundaries of Boone-Raleigh Public Service District, heretofore created by said County Commission, for the provision of both water and sewer service.

4. That the County Commission of Boone County, West Virginia, shall hold a hearing on the proposed consolidation of the Coal River Public Service District and Van Public Service District and Danville Public Service District on the 11 day of Jan, 1999, in the Boone County Courthouse in Madison at 6:00 P.m.

5. That the Clerk of the County Commission of Boone County shall cause notice of hearing and a description of all of the territory proposed to be included in the boundaries of the consolidated Boone County Public Service District to be published as a Class I legal advertisement at least ten (10) days prior to the hearing.

6. That the County Commission of Boone County shall post the notice of the hearing and description of the consolidated public service district's boundaries in at

least five (5) conspicuous places within the proposed service territory of the consolidated Coal River Public Service District and Van Public Service District and Danville Public Service District.

7. That the Clerk of the County Commission of Boone County shall cause a copy of the Resolution and Order to be filed with the Executive Secretary of the Public Service Commission of West Virginia not later than ten (10) days prior to the hearing set forth herein.

ENTERED into the permanent record of Boone County, West Virginia, this 7th day of December, 1998

President

Commissioner

Commissioner

ATTEST:

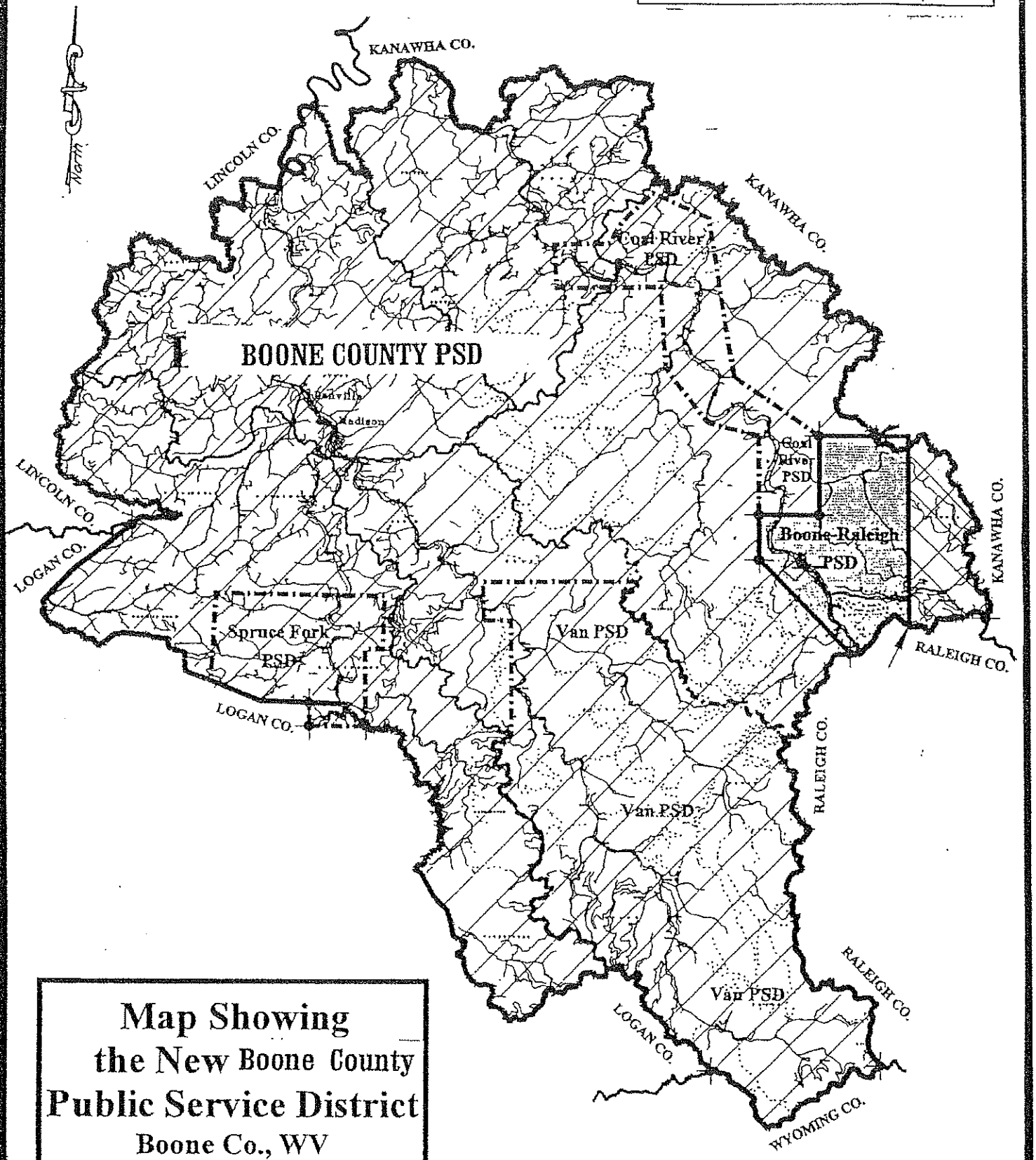
Clerk

BOONE COUNTY PSD ENCOMPASSES ALL OF BOONE COUNTY EXCEPT THE LIMITS OF BOONE-RALEIGH PSD.

BOONE COUNTY PSD ALSO INCLUDES 0.23 SQUARE MILES IN LOGAN COUNTY

West Virginia-American Water Company

A Part of the American Water System




# Map Showing the New Boone County Public Service District

## Boone Co., WV

Scale: None 1998

Jan 11, 1999

285

The Boone County Commission met in REGULAR SESSION on Monday, January 11, 1999. Present for the meeting were President Gene Kuhn and Commissioners Gordon Eversole and J. M. "Mickey" Protan. Staff present were Pat Dent, Carma Mahon and Jean Henry.

President Kuhn called the meeting to order at 9:40 p.m. This meeting was tape recorded on tape #986 beginning at 1384 on the counter.

At approximately 1405 on the counter, Jerry Brown came before the Commission on behalf of the Madison Base Burners, an amateur softball association for girls from ages 12 to 16 years, who compete in tournaments throughout West Viginia and Ohio. He requested $2,500 to help with expenses such as tournament fees and insurance costs. The Commission told Mr. Brown they would refer his request to the Prosecuting Attorney to see if it would be a legal expenditure and get back with him. Mr. Brown also discussed a lighting problem at the Lick Creek Field. They have the lights available but they may have to purchase poles.

At approximately 1823 on the counter, Commissioner Eversole made a motion to approve the minutes from the previous meeting; seconded by Commissioner Protan, the motion passed unanimously.

At approximately 1867 on the counter, Commissioner Eversole made a motion to authorize its President, Gene Kuhn, to sign on its behalf, the Local Law Enforcement Block Grant Progress Report for the period from 7/1/98 - 12/31/98 and the Final Report; seconded by Commissioner Protan, the motion passed unanimously.

At approximately 1877 on the counter, Mrs. Mahon stated that she has been talking with John Romano, RIC, regarding the Regional Water Project. E.D.A. & H.U.D. both require that we go out to bid for engineering. John Romano has placed the ad in the Charleston papers and we will open proposals on February 1st. at 2:00 p.m. She has prepared an information packet with the proposal forms to be filled out.

At approximately 1996 on the counter, Commissioner Eversole made a motion to authorize its President, Gene Kuhn, to sign on its behalf, the authorization form to allow Boone County Bank to subsitute pledged collateral, contingent upon the Prosecuting Attorney's approval; seconded by Commissioner Protan, the motion passed unanimously.

At approximately 2015 on the counter, Mrs. Mahon presented a request from Shawnee Hills to place a utility building behind their office at Lick Creek. The Commission directed that the staff call or write Shawnee Hills a letter authorizing the utility building to be placed behind their office.

At approximately 2074 on the counter, Mrs. Mahon presented a request from Bill Harvey, Boone County Health Department, saying that the Sanitarian's blazer has blown an engine and requesting a 4-WD vehicle be assigned to them if the Commission had one

at Flatwoods on January 15th. Commissioner Eversole suggested that Mr. Mahon attend the session on Friday for the budget training in his place, to which the Commission agreed.

At 5:42 p.m. the Commission took a brief recess.

Back in session at 6:00 p.m. and approximately 2572 on the counter, Commissioner Kuhn stated that it was time for the Public Hearing regarding the consolidation of Coal River PSD, Van PSD and Danville PSD with Boone County PSD for sewer. The following indidividuals were present for the meeting: Nick Ciccarello, David Foster and Chuck Knurek from the P.S.C.; Martin Tighe, Tom Ferguson, D.E.P; Frank Rowley, James Reed, James Skidmore, Fred Riggleman, David Brown and Patricia Pauley with Danville PSD; Crystal Sutphin from Van and Carl Birley, David Birley from Danville. President Kuhn turned the meeting over to Nick Ciccarello, PSC. Mr. Ciccarello commended the Commission in planning long range expansion and continued that the day of receiving money for small neighborhood utilities is over. The Infrastructure Council and the Legislature has said to us "Consolidate and get rid of the neighborhood utilities and make them large enough to have the cash flow necessary for proper operation." That's why we're here tonight. All over the state, they are doing the same thing. He introduced his consolidation team: David Foster, Technical Analyst- Engineering and Chuck Knurek, Financial Analyst and continued that they want to open up with questions from the floor. He will be asking the Commission at the end of the hearing to approve the order to consolidate. An individual stated that he was concerned about the Van and Racine areas and questioned if these areas would be part of the plan. Mr. Ciccarello answered that all parts of Boone county will be part of this plan. Mr. Foster discussed a sewer problem at Van and continued that once Van PSD was consolidated into Boone County PSD, there would no one there to take care of the sewer. They are aware of the problems and all these areas will be part of the expansion. An individual questioned what were the plans for expansion and how will it be funded. Mr. Ciccarello continued that a Board of Directors will be appointed and operate as a county-wide PSD. Commissioner Protan stated that this consolidation does not mean everyone will have sewer in the next few years; this is just the beginning. Then, we could start planning for grants. Mr. Foster stated that you should never put in a sewer system where you don't have a good metered water system. This will be done in phases; this is just the very beginning. You would probably grow from the Danville PSD for that is where you population is located. Commissioner Kuhn stated he would envision that you would probably have four or five sewer plants. Mr. Foster stated that Mingo County had designs prepared for proposed water and sewer projects, with the projected cost of each project. He recommended that Boone County do the same for water and sewer. Commissioner Kuhn stated that we have a plan for the Regional Water System but we haven't done a plan for the sewer system. Mr. Ciccarello stated if by some miracle, the county got enough

RECEIVED 99 MAR 24 AM 9:24

money to put in a sewer plant at Van at no pay back, there is not enough customers up there to operate the plant. You need one system with a base of customers big enough to pay for operation of the system. An individual questioned what kind of rates could they expect. Mr. Knurek stated this would depend on the amount of grant monies and the type of sewer plant you built. As you grow, you will have more people to spread the cost over. Mr. Riggleman, General Manager of Danville PSD stated that Danville PSD financed 4 million for a 12 million dollar project; 1600 people are paying the minimum rate of $16.84/month. If you financed another 4 million, there would be a substantial rate increase. President Kuhn commented that if the government mandated sewer systems to be built, they should supply the money for the systems. Mr. Riggleman stated that he was afraid that before long they were going to see an Administrative Order on Van facing Danville and a fine will be assessed by the D.E.P. if the correction was not done in a certain time and we can't afford a fine. Mr. Reed stated that Danville PSD was fined $5,000 one time. An individual stated that he feels like people already on the sewer system will have their rates raised to cover the cost of expansion. Mr. Ciccarillo stated that previously you had neighborhood PSD's and people outside the area was not allowed to get funds. That's the reason the boundaries around the PSD's must be expanded to allow everyone to have an equal shot somewhere down the road. No one really knows what the cost will be. Commissioner Eversole stated that when we started the countywide water project, it was projected to cost $10,000,000; now, we are up to $31,000,000. Mr. Ciccarillo stated that the Infrastructure Council and Legislature are moving in the terms of priority lists. Boone County should set down in priorities the projects they want to do. Then, they can go to the Infrastructure Council and Legislature with the lists and ask for grants. Mr. Riggleman asked Mr. Tighe, D.E.P., what his further plans were for Van, to which he answered that he didn't know. Commissioner Eversole stated that he feels like we need to have engineers prepare a plan for sewer systems in Boone County and get the proposed costs. At 6:30 p.m. the Public Meeting was closed. Mr. Ciccarillo gave the following overview of the consolidation process: the County Commission will adopt the resolution and he will take it back to the PSC. In 45 days there will be another Public Hearing, and it will probably take another 45 to 60 days for the final order. It will be 4 to 5 months before anything happens; everyone will have the opportunity to speak again. It's important that the county get engineering studies done for a county-wide sewer system. Commissioner Eversole made a motion to adopt the resolution as prepared by the Public Service Commission; seconded by Commissioner Protan, the motion passed unanimously.

At approximately 4266 on the counter, Larry Lodato presented the 1998 Annual Report for the Boone County Development Authority.

At approximately 4632 on the counter, Commissioner Eversole made a motion to reappoint James Reed and Frank Rowley to the Danville PSD to serve until the new Boone

1-11-99

At a REGULAR session of the County Commission of Boone County, West Virginia, held at the Boone Courthouse Annex on the 11th. day of January, 1999, the following order was made and entered.

SUBJECT: A RESOLUTION AND ORDER PROPOSING THE CONSOLIDATION OF THE COAL RIVER PUBLIC SERICE DISTRICT AND VAN PUBLIC SERVICE DISTRICT AND DANVILLE PUBLIC SERVICE DISTRICT WITH THE BOONE COUNTY PUBLIC SERVICE DISTRICT

The following motion was offered by Commissioner Gordon Eversole:

WHEREAS, the County Commission of Boone County, West Virginia, did heretofore, by Resolution and Order adopted on December 7, 1998, proposed the consolidation of the Coal River PSD and Van PSD and Danville PSD with the Boone County Public Service District;

WHEREAS, by said Resolution and Order, the County Commission of Boone County, West Virginia, did set a hearing on the proposed consolidation to be held on January 11,1999; filed with the Clerk of the County Comission of Boone County a copy of the Resolution and Order; required notice of said hearing be given by Class I legal publication in Boone County and required the Clerk of the County Commission of Boone County to cause a copy of the Resolution and Order to be filed with the Executive Secretary of the Public Service Commission;

WHEREAS, notice of this January 11, 1999 hearing has been given in the manner provided and required by said Resolution and order by West Virginia Code 16-13A-2, and all interested parties have been afforded an opportunity of being heard for and against the consolidation of Coal River PSD and Van PSD and Danville PSD with Boone County PSD but no written protest has been filed by the requisite number of qualified voters registered and residing within the existing boundaries of the Districts, and said County Commission has given due consideration to all matters for which such hearing was offered; and

WHEREAS, it is now deemed desirous by said County Commission to adopt a Resolution and Order, subject to the approval of the Public Service Commission of West Virginia, consolidating Coal River PSD and Van PSD and Danville PSD with Boone County PSD for the provision of water and sewer service.

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

1. That the Boone County Commission of Boone County, West Virginia, upon its own motion, proposes the consolidation of the sewer authority of the Coal River PSD and Van PSD and Danville PSD with the Boone County PSD, located within Boone County, for the provision of water and sewer service.

2. That the County Commission of Boone County, West Virginia, upon its own motion, proposes through the consolidation of the Coal River PSD and Van PSD and Danville PSD to expand the boundaries of the existing sewer public service districts to include all the area of Boone County except the area presently served by the Boone-Raleigh PSD.

3. That the County Commission of Boone County, West Virginia,upon its own motion, proposes that through said consolidation, the resulting expansion of the boundaries of the Boone County PSD, and to include within its boundaries all the area of Boone County, WV, which is not currently contained within the boundaries of Boone-Raleigh PSD, heretofore created by said County Commission, for the provision of both water and sewer service.

The adoption of the foregoing motion, having been made by Gordon Eversole, Commissioner, and duly seconded by J. M. "Mickey" Protan, Commissioner, the vote thereon was as follows:

Gene Kuhn, President ..... AYE

J. M. "Mickey" Protan, Commissioner..... AYE

Gordon Eversole, Commissioner ..... AYE

Whereupon, Gene Kuhn, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

Gene Kuhn, President

J. M. "Mickey" Protan, Commissioner

Gordon Eversole, Commissioner

# Boone County Commission

**Boone County Courthouse Annex**
**206 Court Street • Suite 300**
**Madison, WV 25130**

**Phone (304) 369-7301**
**Fax (304) 369-7306**

J. M. "MICKEY" PROTAN GENE KUHN GORDON EVERSOLE

ORIGINAL

April 27, 1999

Ms. Sandra Neal
Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street
P. O. Box 812
Charleston, West Virginia 25323

RE: CASE NO. 99-0108-PSWD-PC
BOONE COUNTY COMMISSION

Dear Ms. Neal:

On January 11, 1999, the Boone County Commission held a public hearing regarding the above-referenced consolidation and expansion case. There being no objections given either in written or oral form, the Boone County Commission then entered an order to proceed with the consolidation and expansion as proposed. Please find enclosed the following:

1. Copies of Affidavits substantiating that the posting and publication of the public hearing, as required by *West Virginia Code* § 16-13A-2(c), (d) and (g).

2. Copy of the Order entered January 11, 1999, by the Boone County Commission to proceed with the consolidation and expansion, as proposed.

If there are questions or you have need of further information, please contact us.

Very truly yours,

Carma Mahon
Asst. County Administrator

Enclosures (3)

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA
COUNTY OF BOONE, to-wit:

I, Janet Yeager, being duly sworn, upon my oath, do depose and say that I am Publisher of the corporation entitled Boone County Newspapers, Inc., publishers of the COAL VALLEY NEWS, that such newspaper has been published for more than one year prior to publication of the approved notice described below; that such newspaper is regularly published weekly, for at least fifty weeks during the calendar year, in the municipality of Madison, Boone County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, 1931, as amended, within the publication area of the aforesaid municipali-; that such newspaper averages in length four or more pages, exclusive of any cover per issue; that such newspaper is a newspaper to which the general public resorts for passing events 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 Boone Co. Commission - PSI

was duly published in the COAL VALLEY NEWS once a week

weeks (Class I), commencing with the issue of the 30t

1998, and ending with the issue of the 30th day of Dec

(and was posted at the _____

on the _____ day of _____, 1998;)

that said annexed notice was published on the following dates

12/30

_____, 1998,

and the cost of publishing said annexed notice as aforesaid W

**NOTICE OF HEARING**
**BEFORE THE COUNTY COMMISSION**
**OF BOONE COUNTY**
**A RESOLUTION AND ORDER PROPOSING THE**
**CONSOLIDATION OF THE**
**COAL RIVER PUBLIC SERVICE DISTRICT AND**
**VAN PUBLIC SERVICE DISTRICT AND**
**DANVILLE PUBLIC SERVICE DISTRICT**
**WITH THE BOONE COUNTY**
**PUBLIC SERVICE DISTRICT**

WHEREAS, the County Commission of Boone County desires to facilitate the expansion of development in Boone County; and

WHEREAS, West Virginia Code§16-13A-2 provides that a county commission may consolidate public service districts in order to achieve efficiency of operations; and

WHEREAS, it is now deemed desirous by said County Commission to adopt a resolution and order proposing the consolidation of the sewer authority of the Coal River Public Service District and Van Public Service District and Danville Public Service District with the Boone County Public Service District for provision of water and sewer service.

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

1. That the County Commission of Boone County, West Virginia, upon its own motion, proposes the consolidation of the sewer authority of the Coal River Public Service District and Van Public Service District and Danville Public Service District with the Boone County Public Service District, located within Boone County, West Virginia, for the provision of water and sewer service.

2. That the County Commission of Boone County, West Virginia, upon its own motion, proposes through the consolidation of the Coal River Public Service District and Van Public Service District and Danville Public Service District to expand the boundaries of the existing sewer public service districts and to include all the area of Boone County except the area presently served by the Boone-Raleigh Public Service District.

3. That the County Commission of Boone County, West Virginia, upon its own motion, proposes through said consolidation, the resulting expansion of the boundaries of the Boone County Public Service District, and to include within its boundaries all the area of Boone County, West Virginia, which is not currently contained within the boundaries of Boone-Raleigh Public Service District, heretofore created by said County Commission, for the provision of both water and sewer service.

4. That the County Commission of Boone County, West Virginia, shall hold a hearing on the proposed consolidation of the Coal River Public Service District and Van Public Service District and Danville Public Service District on the 11th day of January, 1999, in the Boone County Courthouse Annex, 206 Court St., Suite 300, Madison, WV at 6:00 p.m.

5. That the Clerk of the County Commission of Boone County shall cause notice of hearing and a description of all of the territory proposed to be included in the boundaries of the consolidated Boone County Public Service District to be published as a Class I legal advertisement at least ten (10) days prior to the hearing.

6. That the County Commission of Boone County shall post the notice of the hearing and description of the consolidated public service district's boundaries in at lease five (5) conspicuous places within the proposed service territory of the consolidated Coal River Public Service District and Van Public Service District and Danville Public Service District.

7. That the Clerk of the County Commission of Boone County shall cause a copy of the Resolution and Order to be filed with the Executive Secretary of the Public Service Commission of West Virginia not later than ten (10) days prior to the hearing set forth herein.

ENTERED into the permanent record of Boone County, West Virginia, this 7th day of December, 1998.

/s/ J.M. Mickey Protan, President
/s/ Gene Kuhn, Commissioner
/s/ Gordon Eversole, Commissioner

Attest: /s/ Ed Cooke, Clerk
12-30

Janet Yeager

Taken, subscribed and sworn to before me in my said county this 30 day of Dec., 1998.
My commission expires November 5, 2007.

Peggy Ann Bias

Notary Public of Boone County
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
PEGGY ANN BIAS
COAL VALLEY NEWS
P. O. BOX 508
MADISON, WV 25130
My Commission Expires November 5, 2007

CERTIFICATION OF POSTING
OF
NOTICE OF HEARING

STATE OF WEST VIRGINIA,
COUNTY OF BOONE, to wit:

This day came Teddy A Roe And appeared before the undersigned authority, and after having been duly sworn, did represent the following to be true and correct to the best if his/her knowledge and belief.

I hereby certify that I have posted the attached "Notice of Hearing Before the County Commission of Boone County - A Resolution and Order Proposing the Consolidation of the Coal River Public Service District and Van Public Service District and Danville Public Service District with the Boone County Public Service District" at the following locations:

COAL RIVER PUBLIC SERVICE DISTRICT:

1. Peytona Post Office 12-30-98
2. Racine Market Bulletin board "
3. Seth Post Office "
4. Comfort Post Office "
5. Bloomingrose Post Office "

VAN PUBLIC SERVICE DISTRICT

1. Van Post Office 12-30-98
2. Bob White Post Office "
3. Whitton Post Office "
4. Gordon Post Office "
5. Bim Post Office "

DANVILLE PUBLIC SERVICE DISTRICT

1. BARKER'S HARDWARE 12-30-98
2. #1 TRANSFER STATION - ROCK CREEK "
3. COURTHOUSE "
4. Foster Post Office "
5. Madison Post Office "

Further, the affiant sayeth naught.

Teddy A. Roe
Affiant

Taken, sworn to and subscribed before me this 4th day of January, 1999.
My commission expires May 5, 2000.

Notary Public

At a REGULAR session of the County Commission of Boone County, West Virginia, held at the Boone Courthouse Annex on the 11th. day of January, 1999, the following order was made and entered.

SUBJECT: A RESOLUTION AND ORDER PROPOSING THE CONSOLIDATION OF THE COAL RIVER PUBLIC SERICE DISTRICT AND VAN PUBLIC SERVICE DISTRICT AND DANVILLE PUBLIC SERVICE DISTRICT WITH THE BOONE COUNTY PUBLIC SERVICE DISTRICT

The following motion was offered by Commissioner Gordon Eversole:

WHEREAS, the County Commission of Boone County, West Virginia, did heretofore, by Resolution and Order adopted on December 7, 1998, proposed the consolidation of the Coal River PSD and Van PSD and Danville PSD with the Boone County Public Service District;

WHEREAS, by said Resolution and Order, the County Commission of Boone County, West Virginia, did set a hearing on the proposed consolidation to be held on January 11,1999; filed with the Clerk of the County Comission of Boone County a copy of the Resolution and Order; required notice of said hearing be given by Class I legal publication in Boone County and required the Clerk of the County Commission of Boone County to cause a copy of the Resolution and Order to be filed with the Executive Secretary of the Public Service Commission;

WHEREAS, notice of this January 11, 1999 hearing has been given in the manner provided and required by said Resolution and order by West Virginia Code 16-13A-2, and all interested parties have been afforded an opportunity of being heard for and against the consolidation of Coal River PSD and Van PSD and Danville PSD with Boone County PSD but no written protest has been filed by the requisite number of qualified voters registered and residing within the existing boundaries of the Districts, and said County Commission has given due consideration to all matters for which such hearing was offered; and

WHEREAS, it is now deemed desirous by said County Commission to adopt a Resolution and Order, subject to the approval of the Public Service Commission of West Virginia, consolidating Coal River PSD and Van PSD and Danville PSD with Boone County PSD for the provision of water and sewer service.

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

1. That the Boone County Commission of Boone County, West Virginia, upon its own motion, proposes the consolidation of the sewer authority of the Coal River PSD and Van PSD and Danville PSD with the Boone County PSD, located within Boone County, for the provision of water and sewer service.

2. That the County Commission of Boone County, West Virginia, upon its own motion, proposes through the consolidation of the Coal River PSD and Van PSD and Danville PSD to expand the boundaries of the existing sewer public service districts to include all the area of Boone County except the area presently served by the Boone-Raleigh PSD.

3. That the County Commission of Boone County, West Virginia,upon its own motion, proposes that through said consolidation, the resulting expansion of the boundaries of the Boone County PSD, and to include within its boundaries all the area of Boone County, WV, which is not currently contained within the boundaries of Boone-Raleigh PSD, heretofore created by said County Commission, for the provision of both water and sewer service.

The adoption of the foregoing motion, having been made by Gordon Eversole, Commissioner, and duly seconded by J. M. "Mickey" Protan, Commissioner, the vote thereon was as follows:

Gene Kuhn, President ..... AYE

J. M. "Mickey" Protan, Commissioner..... AYE

Gordon Eversole, Commissioner ..... AYE

Whereupon, Gene Kuhn, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

Gene Kuhn, President

J. M. "Mickey" Protan, Commissioner

Gordon Eversole, Commissioner

Jan 28, 1999

PUBLIC SERVICE COMMISSION OF W. Va.

INITIAL, FURTHER AND FINAL INTERNAL MEMORANDUM

DATE: January 28, 1999

TO: Cecilia Jarrell, Staff Attorney
Legal Division

FROM: Charles Knurek, Senior Utility Analyst CK
Water and Wastewater Division

SUBJECT: Case No. 99-0108-PWD-PC
Boone County Commission
(Initial, Further and Final)

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W. VA. PUBLIC SERV. COMM.
LEGAL DIVISION

On January 12, 1999, the Boone County Commission filed a petition requesting Public Service Commission approval to consolidate the sewer authority of the Coal River Public Service District, Van Public Service District - Sewer, and Danville Public Service District - Sewer with the Boone County Public Service District. The Boone County Commission states that it will hold a public hearing on January 11, 1999, in accordance with the provisions of West Virginia Code §16-13A-2. The County Commission has submitted an adopted Resolution which sets forth the proposed consolidation.

The Van Public Service District was created in 1967, to provide both water and sewer service within its established boundaries. The District serves approximately 230 sewer customers.

The Coal River Public Service District was created in 1966, to provide both water and sewer service. The District does not own or operate a sewer system.

The Danville Public Service District was created in 1973, to provide water and sewer service. The water system is operated through a contract with the West Virginia-American Water Company. The sewer system was completed in the last five years and provides service to approximately 1,600 customers.

Technical Staff has been involved with the activities of the Boone County Commission for several months, assisting in the consolidation of these Districts. Staff notes that the Boone County Commission held its public hearing on January 11, 1999, and there were no significant protests to the consolidation of the Districts. The main concern was the rates to be charged to the consolidated customer base. Staff explained that existing rates for each District would remain in effect until such time

as a Class Cost of Service Study could be performed and rates would be designed for all customers to be served. As the areas served by the Boone County Public Service District expanded, the rates and charges would be adjusted accordingly.

Staff recommends the following:

(1) Approval of the Boone County Commission's petition to consolidate the sewer authority of the Coal River Public Service District, Van Public Service District - Sewer and Danville Public Service District - Sewer with the Boone County Public Service District be granted.

(2) The cash assets of the Van Public Service District and Danville Public Service District, other than restricted bond reserve, shall be placed in an interest bearing account for repairs, replacements and extensions to Van Public Service District and Danville Public Service District.

(3) The Boone County Public Service District shall adopt the Van Public Service District and Danville Public Service District tariffs and continue to charge their customers by these tariffs. The Boone County Public Service District shall maintain a separate financial and statistical account of each of the District's operation.

(4) After all financial obligations of Van Public Service District and Danville Public Service District are met, any surplus cash shall be deposited into the restricted cash account as set forth in Staff Recommendation No. 2.

(5) That the Boone County Public Service District shall file a rate case after 18 months of consolidated operation so that the Public Service Commission can determine an adequate rate structure for the consolidated utility.

CK:pla

Feb 1, 1999

Rec'd 2-1-99

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SECRETARY'S OFFICE

BEFORE THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CHARLESTON

**INITIAL JOINT STAFF MEMORANDUM**

TO: SANDRA SQUIRE
Executive Secretary

DATE: February 1, 1999

FROM: MEYISHI BLAIR, ESQ.
Legal Division

SUBJECT: CASE NO. 99-0108-PWD-PC
BOONE COUNTY COMMISSION

On December 23, 1998, the Boone County Commission (County Commission) filed a petition with the West Virginia Public Service Commission (PSC or Commission) seeking the Commission's review and approval of its proposed consolidation of certain districts, namely, the Coal River Public Service District, the Van Public Service District, and the Danville Public Service District with the Boone County Public Service District. It appears from the filing that after consolidation and expansion, the Boone County Public Service District will be the surviving entity. The Commission's tariff office indicates that the Boone County Public Service District has been certificated to provide water service in certain areas of Boone County.

This petition was placed on the Commission's docket of active cases on January 12, 1999.

According to the Technical Staff's response to the petition received by this Staff Attorney on February 1, 1999, the Coal River, Van and Danville Public Service Districts were established to provide both water and sewer service. However, the Coal River Public Service District, according to Technical Staff, does not own or operate a sewer system. Once the proposed consolidation and expansion is completed, the Boone County Public Service District will provide both water and sewer service in Boone County for all area except that area of Boone County that is served presently by the Boone-Raleigh Public Service District. Petition, p. 2. The County Commission also seeks to expand the boundaries of the Boone County Public Service District to achieve its objective. Id.

If Staff Counsel has correctly understood the County Commission's petition, the following should have been done by the County Commission in order to be in compliance with the statutory requirements of West Virginia Code §16-13A-2.

(1) The County Commission should have posted in five conspicuous places in the Coal River, Van, Danville, and Boone County Public Service Districts a notice containing the same information as is contained in the published notice (Class I advertisement) that is required (West Virginia Code §16-13A-2(c), (d) and (g)); and,

(2) The County Commission should provide affidavits which substantiate that the posting as required and the publication as required were done. Also, the County Commission should provide

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a copy of the minutes of its January 11, 1999 hearing concerning the consolidation and expansion that it proposes to do.

An examination of the County Commission's petition reveals that:

Either the County Commission did not post in five conspicuous places in the Boone County Public Service District the notice (Class I advertisement) or the County Commission has failed to provide the affidavit of posting regarding where the notice was posted in the Boone County Public Service District. Further, the County Commission needs to provide a copy of the minutes of its January 11, 1999 hearing held relative to the consolidation and expansion that it proposes to do. Finally in this regard, the County Commission did not timely submit a copy of its order concerning the proposed consolidation and expansion to the Commission as the order was entered on December 7, 1998, and the same was received at the PSC on December 23, 1998. Code §16-13A-2(f).

As you will note from Technical Staff's memorandum, Technical Staff recommends, among other things, approval of the petition. Staff Counsel notes that in Canyon Public Service District v. Tasa Coal Company, 195 S.E.2d 647 (1973) , that the Court found that the failure to do the posting and publication requirements of Code §16-13A-2 were not crucial since there were no objections either before, during or after the County Commission's hearing to the creation of the Canyon Public Service District or to the procedures employed in its creation. Accordingly the Court ruled that substantial compliance was sufficient. Id., at 652. In accord with this Court decision, Staff Counsel would find substantial compliance, if the minutes of the County Commission's hearing held on January 11, 1999, evidences no objections to the consolidation and expansion or to the procedures employed in the obtaining the consolidation and expansion.

With regard to the Executive Secretary's docketing of this case, the case designation should include "PSD" as well. Additionally, the case/petition description should include after Boone County PSD "for provision of water and sewer service."

Once the County Commission has responded to the issues set forth in this memorandum, Staff Counsel will provide a recommendation.

Attachment
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ALS
990108

July 13, 1999
7-13-99

990108SEC071399.WPD

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 13th day of July, 1999.

CASE NO. 99-0108-PSWD-PC

BOONE COUNTY COMMISSION
Petition for consent and approval for the consolidation of Coal River Public Service District, Van Public Service District and Danville Public Service District with Boone County Public Service District.

COMMISSION ORDER
WAIVING EXCEPTION PERIOD

On July 8, 1999, Administrative Law Judge Robert W. Glass entered a Recommended Decision which, among other things, approved the consolidation of the Coal River, Van and Danville Public Service Districts with the Boone County Public Service District.

On July 13, 1999, Gene Kuhn, President, Boone County Commission, filed a letter requesting a waiver of the fifteen day period of time in which a party may file exceptions to the Recommended Decision. Mr. Kuhn's letter also asked for expedited treatment of his request. Commission Staff has indicated it has no objection to granting said waiver.

West Virginia Code §24-1-9 provides a time period of at least twenty (20) days from the date of a recommended order until it becomes effective. According to West Virginia Code §24-1-9(c), at least fifteen (15) days must be afforded the parties within which to file exceptions. In addition, §24-1-9(e) provides that when no exceptions are filed within the specified time period, the Commission shall have an additional five (5) days within which to stay or postpone the order.

The Commission is of the opinion and belief that said requests of waiver received by the Commission on July 13, 1999, should be granted.

IT IS, THEREFORE, ORDERED that the requested waiver be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the Administrative Law Judge's Recommended Decision

in this matter becomes final (5) days after the date of this order.

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

**A True Copy, Teste:**

Sandra Squire

**Sandra Squire**
**Executive Secretary**

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7/12/99

At a REGULAR session of the County Commission of Boone County, est Virginia, held at the Courthouse thereof on the 12th. day of July, 1999, the following order was made and entered.

SUBJECT: CASE NO. 99-0108-PSWD-PC BOONE COUNTY COMMISSION
CONSOLIDATION OF COAL RIVER, VAN AND DANVILLE PSDs

The following motion was offered by Commissioner Gordon Eversole:

That the Boone County Commission hereby authorize its President, Gene Kuhn, to sign on its behalf, the letter to Sandra Squire, PSC, requesting that the 15 day waiting period for the above named case be waived and that the recommended order become effective as of the date entered (July 8, 1999). Further, that the sitting Boone County PSD Water Board hereby be appointed as Boone County PSD for water and sewer, effected upon PSC approval of the above request.

A copy of this Order has been sent to the Boone County PSD Board Members: Broaddus Lorrison, Lyle Roy, Clarence V. Waller, Richard Browning and Gary Dickerson.

The adoption of the foregoing motion, having been made Gordon Eversole, Commissioner, and duly seconded by Gene Kuhn, Commissioner, the vote thereon was as follows:

Gene Kuhn, President ....._AYE_

J. M. "Mickey" Protan, Commissioner....._AYE_

Gordon Eversole, Commissioner ....._AYE_

Whereupon, Gene Kuhn, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

Gene Kuhn, President

J. M. "Mickey" Protan, Commissioner

Gordon Eversole, Commissioner

7/8/99

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
7-18-99 by
Commission
Order waiving

Entered: July 8, 1999

CASE NO. 99-0108-PSWD-PC

BOONE COUNTY COMMISSION
Petition for consent and approval for the consolidation of Coal River Public Service District, Van Public Service District and Danville Public Service District with Boone County Public Service District.

RECOMMENDED DECISION

On December 23, 1998, the Boone County Commission filed a petition requesting Public Service Commission approval of the consolidation of the Coal River, Van and Danville Public Service Districts with the Boone County Public Service District.

By Order dated February 1, 1999, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before July 14, 1999.

On April 14, 1999, Staff Attorney Meyishi Blair filed the Final Joint Staff Memorandum in which Staff recommended that this case be set for hearing in order to fulfill the statutory requirements of West Virginia Code §16-13A-2, in both Boone and Logan Counties, since the Boone County Public Service District will encompass all of Boone County, except the area served by the Boone-Raleigh Public Service District. A small portion of the existing area of the Boone County Public Service District extends into Logan County.

By Order dated April 20, 1999, this matter was set for hearings to be held in both Boone and Logan County. A hearing was scheduled to be held in the County Commission Chambers, Boone County Courthouse Annex, Madison, West Virginia, on May 19, 1999, at 10:00 a.m. A hearing was also scheduled to be held in Logan County, in the County Commission's Meeting Room, Room 104, Logan County Courthouse, Logan, West Virginia, on May 19, 1999, at 1:00 p.m.

The Order of April 20, 1999, required the Boone County Commission to give notice of the hearings to be held in this matter on May 19, 1999, by publishing a copy of a Notice of Hearing, once, in a newspaper, duly

qualified by the Secretary of State, published and of general circulation in Boone and Logan Counties.

The hearings were held as scheduled in both Boone and Logan Counties.

At the hearing held in Boone County, Commissioner Gordon Everole appeared on behalf of the Boone County Commission. Staff was represented by Ms. Meyishi Blair. No one appeared in protest to the petition.

Ms. Carma Mahone was called as a witness by Staff.

Ms. Mahone is the Assistant County Administrator for the Boone County Commission. She explained that, on April 20, 1999, some documentation was filed with the Public Service Commission, including affidavits substantiating that the posting and the publication of the public hearing, as required by West Virginia Code §§16-13A-2c, d and g, had been done properly. Staff opined that, upon review of the documents submitted, it appears they substantially comply with the required documentation. Ms. Mahone further explained that the publication of the Notice of Hearing was made in The Coal River News, which, while published in Boone County, is also considered to be a newspaper of general circulation in Logan County, as it has under distribution in Logan County. Ms. Blair represented that it was her understanding that, in a prior Boone County Commission case, Case No. 98-0464-PWD-PC, the same public service districts were enlarged and merged for water only. At that time and for the purposes of publication, The Coal Valley News was used as a newspaper of general circulation in Logan County, as well as Boone County. With the testimony of Ms. Mahone, no further evidence was presented by Staff and the matter was submitted for a decision. (Boone County Tr., pp. 5-9).

At the hearing held in Logan County, Commission Staff was represented by Ms. Blair. The Affidavit of Publication introduced at the Boone County hearing was accepted as being an affidavit for Logan County, as was established by Ms. Mahone in her testimony at the Boone County hearing. No one appeared in protest and the case was submitted for a decision. (See, Logan County, Tr., pp. 4-5).

## FINDINGS OF FACT

1. On December 23, 1998, the Boone County Commission filed a petition requesting Public Service Commission approval of its proposed consolidation of the Coal River, Van and Danville Public Service Districts with the Boone County Public Service District. (See, Petition).

2. On April 14, 1999, Staff Attorney Meyishi Blair filed the Final Joint Staff Memorandum in which Staff recommended that the case be set for hearings in both Boone and Logan Counties, since the Boone County Public Service District will encompass all of Boone County, except the

area served by the Boone-Raleigh Public Service District. A small portion of the existing territory of the Boone County Public Service District extends into Logan County. Staff Attorney Meyishi Blair represented that, in Case No. 98-0464-PWD-PC dealing with a similar issue, the Public Service Commission approved action based upon publication in the Coal Valley News for providing notice in Logan County. (See, Staff Memorandum filed April 14, 1999).

3. In an Order dated April 20, 1999, this matter was set for hearings to be held in both Boone and Logan Counties on May 19, 1999, beginning at 10:00 a.m. and 1:00 p.m., respectively. Said Order also provided that the Boone County Commission publish a Notice of Hearing, once, in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Boone County. (See, Order dated April 20, 1999).

4. The hearings were held as scheduled on May 19, 1999, in both Boone and Logan Counties. (See, Transcripts, case file).

5. At the hearing held in Boone County, an Affidavit of Publication was received reflecting that publication was made in accordance with the Commission's requirements in Boone County. (See, Boone County Tr., p. 7).

6. Carma Mahone, Assistant Administrator for the Boone County Commission, testified that The Coal Valley News, in which publication of the Notice of Hearing was made, had been determined at an earlier Public Service Commission hearing to be a newspaper of general circulation in Logan County, as well as Boone County.

7. Staff Attorney Meyishi Blair represented that, in Case No. 98-0464-PWD-PC, which involved the same public service districts, the Coal Valley News had been used as a newspaper of general circulation in both Boone and Logan Counties and this was accepted by the Commission. (See, Boone County Tr., p. 8).

8. No one appeared at the hearings held in Boone or Logan Counties to protest the petition. (See, Boone County Tr., p. 9, and Logan County Tr., p. 5).

## CONCLUSIONS OF LAW

1. Since, in Case No. 98-0464-PWD-PC[1], the Commission approved a petition of the Boone County Commission, using only The Coal Valley News

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[1] Case No. 98-0464-PWD-PC was also a Boone County Commission case involving both Boone and Logan Counties. At the hearing, Staff represented that the Coal Valley News had been used for publication in both counties. The Commission's Order of June 18, 1998, approved the Boone County petition indicating that publication had been made in Boone and Logan Counties and no one protested.



Public Service Commission
of West Virginia
Charleston

as a newspaper of general circulation for both Boone and Logan Counties, the Boone County Commission's publication in The Coal Valley News will be considered for the purposes of this Order to satisfy the publication requirements of this case.

2. Since the Notice of Hearing was properly published by the Boone County Commission in both Boone and Logan Counties and no one appeared to protest the petition of the Boone County Commission at either hearing, the petition of the Boone County Commission, filed on December 23, 1998, can be approved as unprotested.

ORDER

IT IS, THEREFORE, ORDERED that the January 11, 1999 Order of the Boone County Commission consolidating the Coal River, Van and Danville Public Service Districts with the Boone County Public Service District, be, and the same hereby is, approved.

IT IS FURTHER ORDERED that the Boone County Commission implement the Staff recommendations set forth in its Memorandum of January 28, 1999, as set forth in Appendix A to this Order.

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

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

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

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

Robert W. Glass
Administrative Law Judge

RWG:jas
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APPENDIX A

BOONE COUNTY COMMISSION

CASE NO. 99-0108-PSWD-PC

STAFF-RECOMMENDATIONS

1. The cash assets of the Van Public Service District and Danville Public Service District, other than restricted bond reserve, shall be placed in an interest bearing account for repairs, replacements and extensions to Van Public Service District and Danville Public Service District.

2. The Boone County Public Service District shall adopt the Van Public Service District and Danville Public Service District tariffs and continue to charge their customers by these tariffs. The Boone County Public Service District shall maintain a separate financial and statistical account of each District's operations.

3. After all financial obligations of Van Public Service District and Danville Public Service District are met, any surplus cash shall be deposited into the restricted cash account as set forth in Staff Recommendation No. 1.

4. The Boone County Public Service District shall file a rate case after 18 months of consolidated operation so that the Public Service Commission can determine an adequate rate structure for the consolidated utility.

Feb 6, 2007

# IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

## RE: REDUCTION OF THE AREA OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT

**WHEREAS,** on the 6th day of February, 2007, pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, the County Commission of Boone County, West Virginia, upon its own motion entered an order proposing to reduce the area of the Boone County Public Service District; and,

**WHEREAS,** pursuant to said motion there was on March 6, 2007 at 2:00 o'clock p.m. a public hearing in the Boone County Commission Chambers, Boone County Courthouse Annex, 3rd Floor, Madison, West Virginia, held in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, with the proper notices of publication and all persons residing in or on or having any interest in property in said territory had an opportunity to be heard for and against the reduction at which hearing the County Commission of Boone County, West Virginia determined that the reduction in area of the Boone County Public Service District was feasible and would be conducive to the preservation of public health, comfort and convenience of said area. Therefore, upon proper motion and second, the County Commission of Boone County, West Virginia, does hereby **ORDER** the reduction of and does reduce the area of the Boone County Public Service District under the provisions of Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

It is further **ORDERED** that the area affected by this order is as follows and indicated on the attached map marked as Exhibit A:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head

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SECRETARY'S OFFICE

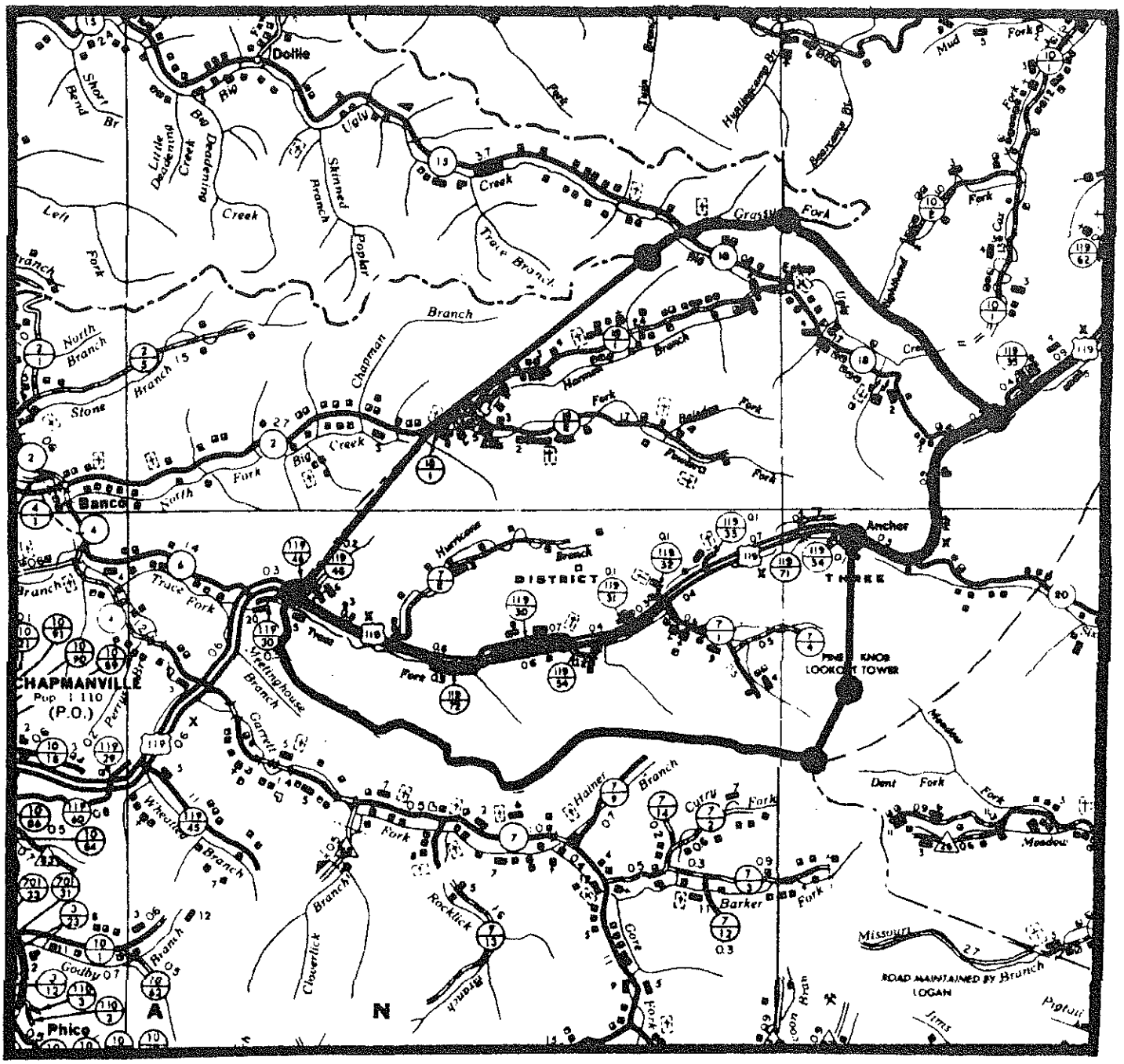
of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

The reduction in area of the Boone County Public Service District as ordered herein shall be effective on the date of the Final Order issued by the West Virginia Public Service Commission approving the reduction.

**ENTERED** this the 6th day of March, 2007.

Mickey Brown

Harry M. (Mickey) Brown, President
BOONE COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO REDUCE THE AREA OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT

On this the 6th day of February, 2007, the Boone County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to reduce the area of the Boone County Public Service District.

**WHEREAS,** on the 11th day of January, 1999, the Boone County Commission upon its own order approved the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, and

**WHEREAS,** on July 18, 1999, the West Virginia Public Service Commission issued a Final Order adopting the resolution and order of the Boone County Commission authorizing the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in Case No. 99-0108-PSWD-PC; and,

**WHEREAS,** the resulting Boone County Public Service District now includes certain unserved areas within its boundaries that are generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County and being more accurately described as follows:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18,

thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**WHEREAS,** it is now proposed by the Boone County Commission to reduce the area of the Boone County Public Service District as established by Boone County Commission Order dated January 11, 1999 by removing that certain area generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County, the boundaries of which are more particularly described above and shown on the attached map, marked Exhibit A.

**WHEREAS,** it is hereby **ORDERED** that a hearing be held on this matter to reduce the area of the Boone County Public Service District. It is further **ORDERED** that a hearing will be held on this matter on the 6th day of MARCH, 2007, at 2:00 o'clock P m., in the Boone County Commission Chambers, Boone County Courthouse Annex, 3rd Floor, Madison, West Virginia.

The Clerk of the County Commission of Boone County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places within the Boone County Public Service District boundaries.

All persons residing in or owning or having any interest in property within the Boone County Public Service District boundaries shall have an opportunity to be heard for or against this proposed reduction in area. At this hearing, the Boone County Commission shall consider and determine the feasibility of reducing the area of the Boone County Public Service District.

ENTERED this the 6th day of February, 2007.

Mickey Brown

Harry M. (Mickey) Brown, President
BOONE COUNTY COMMISSION

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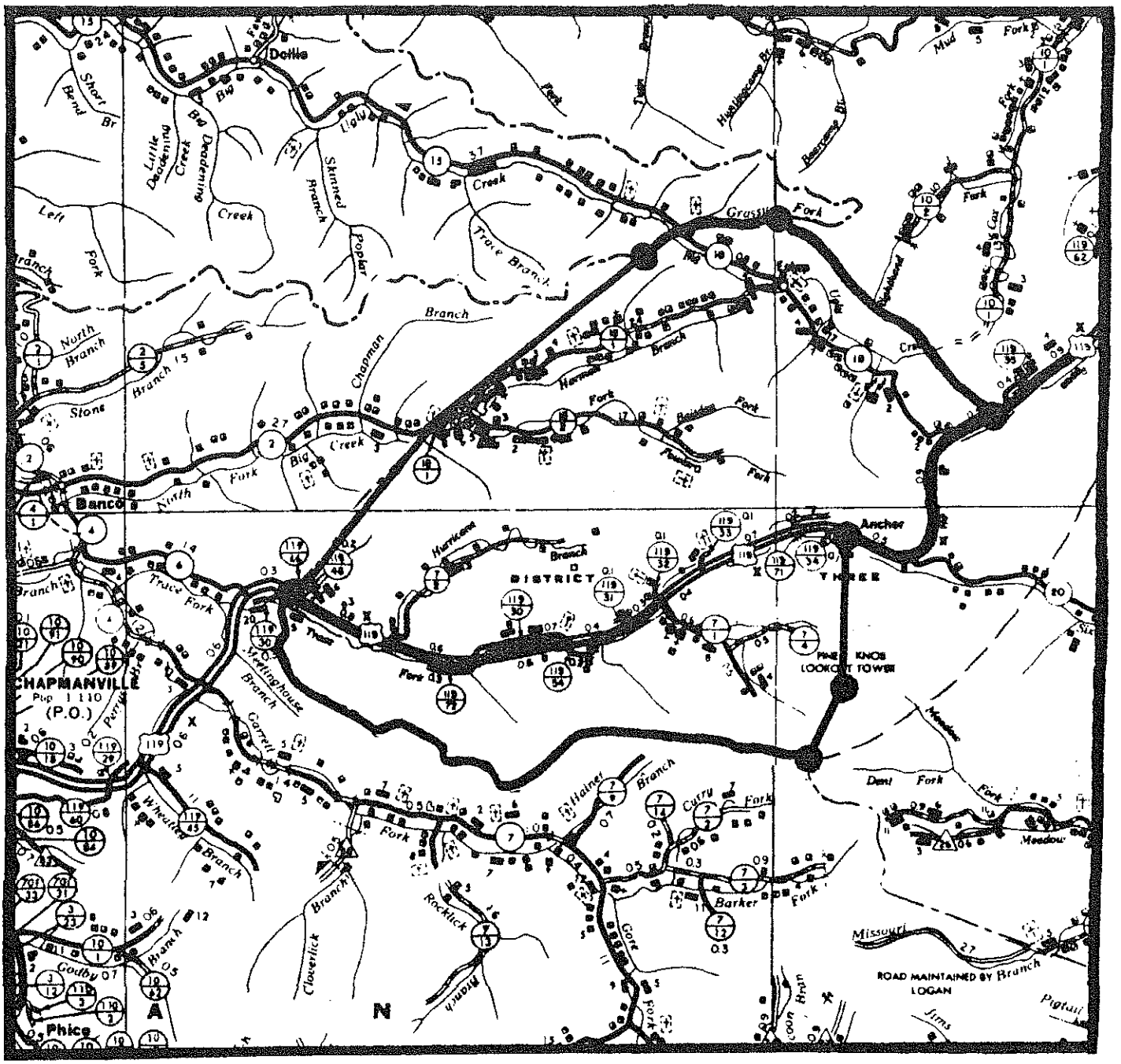



# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO REDUCE THE AREA OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT

On this the 6th day of February, 2007, the Boone County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to reduce the area of the Boone County Public Service District.

**WHEREAS,** on the 11th day of January, 1999, the Boone County Commission upon its own order approved the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, and

**WHEREAS,** on July 18, 1999, the West Virginia Public Service Commission issued a Final Order adopting the resolution and order of the Boone County Commission authorizing the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in Case No. 99-0108-PSWD-PC; and,

**WHEREAS,** the resulting Boone County Public Service District now includes certain unserved areas within its boundaries that are generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County and being more accurately described as follows:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18,

thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**WHEREAS,** it is now proposed by the Boone County Commission to reduce the area of the Boone County Public Service District as established by Boone County Commission Order dated January 11, 1999 by removing that certain area generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County, the boundaries of which are more particularly described above and shown on the attached map, marked Exhibit A.

**WHEREAS,** it is hereby **ORDERED** that a hearing be held on this matter to reduce the area of the Boone County Public Service District. It is further **ORDERED** that a hearing will be held on this matter on the 6th day of MARCH, 2007, at 2:00 o'clock P m., in the Boone County Commission Chambers, Boone County Courthouse Annex, 3rd Floor, Madison, West Virginia.

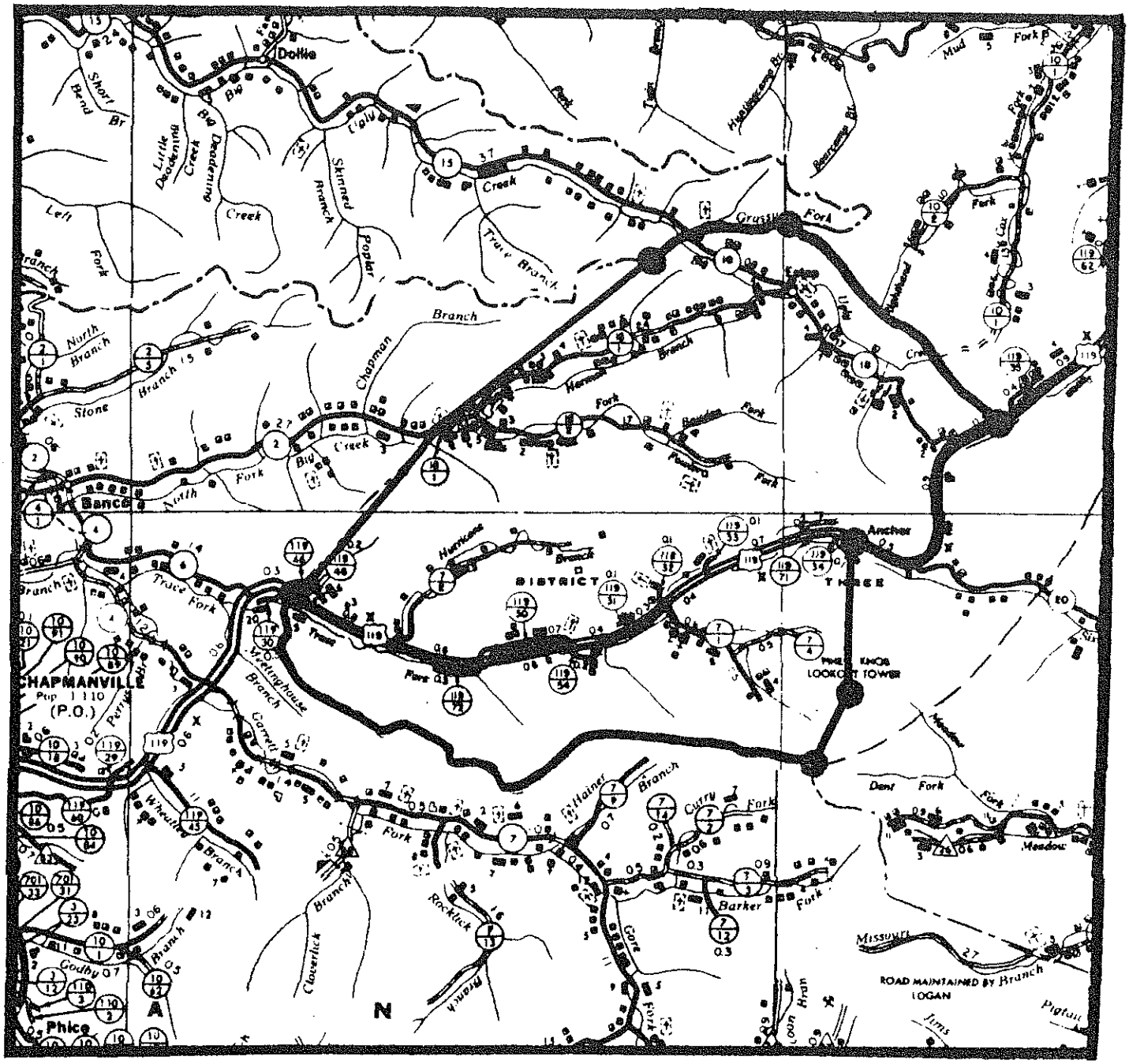
The Clerk of the County Commission of Boone County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places within the Boone County Public Service District boundaries.

All persons residing in or owning or having any interest in property within the Boone County Public Service District boundaries shall have an opportunity to be heard for or against this proposed reduction in area. At this hearing, the Boone County Commission shall consider and determine the feasibility of reducing the area of the Boone County Public Service District.

ENTERED this the 6th day of February, 2007.

Mickey Brown

Harry M. (Mickey) Brown, President
BOONE COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# RESOLUTION

**WHEREAS,** on the 6th day of February, 2007, the County Commission of Boone County, West Virginia adopted an order proposing the reduction in area of the Boone County Public Service District by removing the following territory in Boone County as described below and further identified on the map attached hereto marked Exhibit A:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

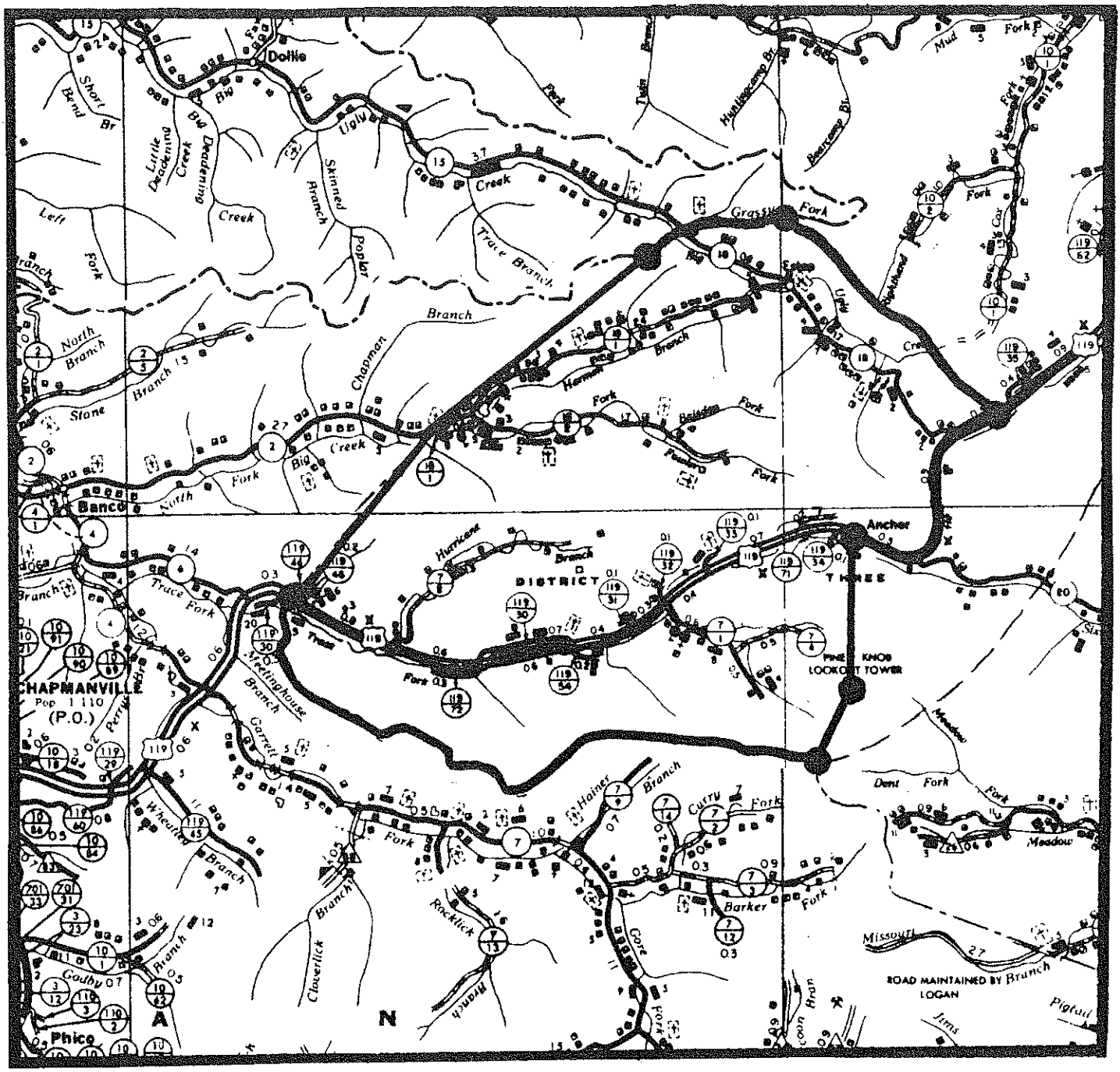
**WHEREAS,** the Board of the Boone County Public Service District believes that the removal of the afore described territory from the Boone County Public Service District will be conducive to the preservation of the public health, comfort and convenience of the residents of this area or part of Boone County.

**THEREFORE BE IT RESOLVED** that the Board of the Boone County Public Service District, does hereby consent to the reduction in area of the Boone County Public Service District by removal of the above described territory.

Dated this 13th day of February, 2007.

Clarence V. (Toby) Waller, Chairman
BOONE COUNTY PUBLIC SERVICE DISTRICT

Attest: Grady Harper
Grady Harper, Secretary/Treasurer
BOONE COUNTY PUBLIC SERVICE DISTRICT




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA
COUNTY OF BOONE, to-wit:

I, Timothy Kiger, being duly sworn, upon my oath, do depose and say that I am Publisher of the corporation entitled Community First Holdings, Inc., publishers of the COAL VALLEY NEWS, that such newspaper has been published for more than one year prior to publication of the approved notice described below; that such newspaper is regularly published weekly, for at least fifty weeks during the calendar year, in the municipality of Madison, Boone County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, 1931, as amended, within the publication area of the aforesaid municipality; that such newspaper averages in length four or more pages, exclusive of any cover per issue; that such newspaper is a newspaper to which the general public resorts for passing events 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 Logan County Public Service District - Boone County Commission

was duly published in the COAL VALLEY NEWS once a week for 1 successive

weeks (Class I), commencing with the issue of the 14th day of February, 2007,

and ending with the issue of the 14th day of February, 2007,

that said annexed notice was published on the following dates:

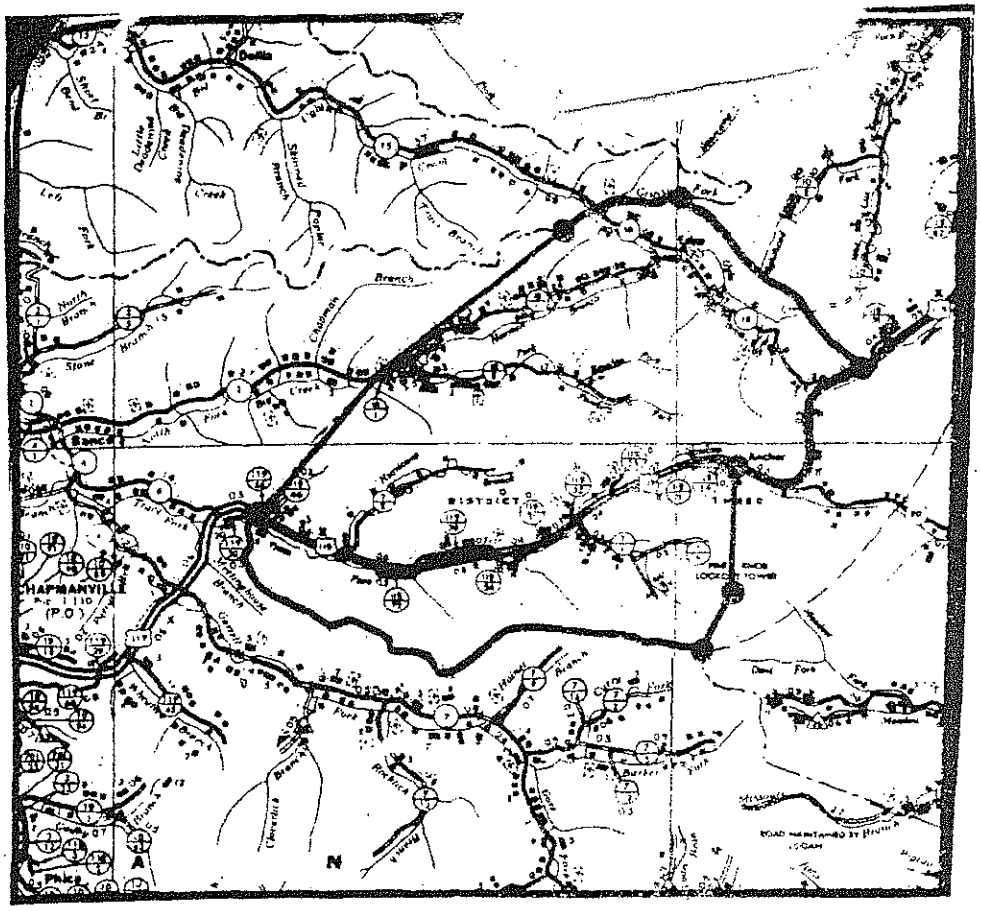
2-14, 2006

and the cost of publishing said annexed notice as aforesaid was $352.80

Taken, subscribed and sworn to before me in my said county this 14th Day of February, 2007.
My commission expires January 9, 2017.

Notary Public of Boone County
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LORETTA JOHNSON
350 CONNIE LANE
DANVILLE, WV 25053
My commission expires January 9, 2017




# EXHIBIT A

(Scale: 1" = 1 Mile)

ADVERTISEMENT
IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA
RE: RESOLUTION TO REDUCE THE AREA OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT

On this the 6th day of February, 2007, the Boone County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to reduce the area of the Boone County Public Service District.

WHEREAS, on the 11th day of January, 1999, the Boone County Commission upon its own order approved the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, and

WHEREAS, on July 18, 1999, the West Virginia Public Service Commission issued a Final Order adopting the resolution and order of the Boone County Commission authorizing the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public District in Case No. 99-0108-PSWD-PC; and,

WHEREAS, the resulting Boone County Public Service District now included certain unserved area within its boundaries that are generally located in the Southern US 119, North Fork and Big Ugly Road areas of Boone County and being more accurately described as follows:

Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the US 119 right-of-way and the Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northwesterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the US 119 right-of-way located 2,000 feet northeast of the intersection of US 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln county lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 16,2220 feet, more or less, to the point of beginning.

WHEREAS, it is now proposed by the Boone County Commission to reduce the area of the Boone County Public Service District as established by Boone County Commission Order dated January 11, 1999 by removing that certain area generally located in the Southern US 119, North Fork and Big Ugly Road area o Boone County, the boundaries of which are more particularly described above and shown on the attached map, marked Exhibit A.

WHEREAS, it is hereby ORDERED that a hearing be held on this matter to reduce the area of the Boone County Public Service District. It is further ORDERED that a hearing will be held on this matter on the 6th day of March, 2007, at 2:00 o'clock pm, in the Boone County Commission Chambers, Boone County Courthouse Annex, 3rd Floor, Madison, West Virginia.

The Clerk of the County Commission of Boone County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class 1 Legal advertisment in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous laces within the Boone County Public Service District boundaries.

All persons residing in or owning or having any interest in property within the Boone County Public Service District boundaries shall have an opportunity to be heard for or against this proposed reduction in area. At this hearing, the Boone County Commission shall consider and determine the feasibility of reducing the area of the Boone County Public Service District.

ENTERED this the 6th day of February, 2007.

/S/ Harry M. (Mickey) Brown, President
Boone County Commission

# CERTIFICATION

I, Charles R. Roberts, Jr., Managing Engineer, Logan County Public Service District do hereby certify that I posted or caused to be posted the attached notice in such locations within the area of Boone County within the existing boundaries of the Boone County Public Service District and on such dates as listed below.

| LOCATION | DATE POSTED |
|---|---|
| Boone County PSD Office | February 21, 2007 |
| Boone County Courthouse | February 21, 2007 |
| U.S. Post Office, Danville | February 21, 2007 |
| Krogers, Madison | February 21, 2007 |
| Traders Town | February 21, 2007 |
| Boone Truck Driving Academy | February 21, 2007 |
| American Coal Testing | February 21, 2007 |
| The Home Place | February 21, 2007 |

Charles R. Roberts, Jr.
Signature

February 22, 2007
Date

STATE OF WEST VIRGINIA
COUNTY OF LOGAN, TO-WIT:

Acknowledged before me this 22nd day of February, 2007, by Charles R. Roberts, Jr., Managing Engineer, Logan County Public Service District.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MELINDA GULLETT
P. O. BOX 803
LOGAN, WV 25601
My Commission Expires June 18, 2007

My commission expires June 18, 2007

Melinda Gullett
Notary Public

# IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO REDUCE THE AREA OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT

On this the 6th day of February, 2007, the Boone County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to reduce the area of the Boone County Public Service District.

**WHEREAS,** on the 11th day of January, 1999, the Boone County Commission upon its own order approved the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, and

**WHEREAS,** on July 18, 1999, the West Virginia Public Service Commission issued a Final Order adopting the resolution and order of the Boone County Commission authorizing the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in Case No. 99-0108-PSWD-PC; and,

**WHEREAS,** the resulting Boone County Public Service District now includes certain unserved areas within its boundaries that are generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County and being more accurately described as follows:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18,

thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**WHEREAS,** it is now proposed by the Boone County Commission to reduce the area of the Boone County Public Service District as established by Boone County Commission Order dated January 11, 1999 by removing that certain area generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County, the boundaries of which are more particularly described above and shown on the attached map, marked Exhibit A.

**WHEREAS,** it is hereby **ORDERED** that a hearing be held on this matter to reduce the area of the Boone County Public Service District. It is further **ORDERED** that a hearing will be held on this matter on the 6th day of MARCH, 2007, at 2:00 o'clock P m., in the Boone County Commission Chambers, Boone County Courthouse Annex, 3rd Floor, Madison, West Virginia.

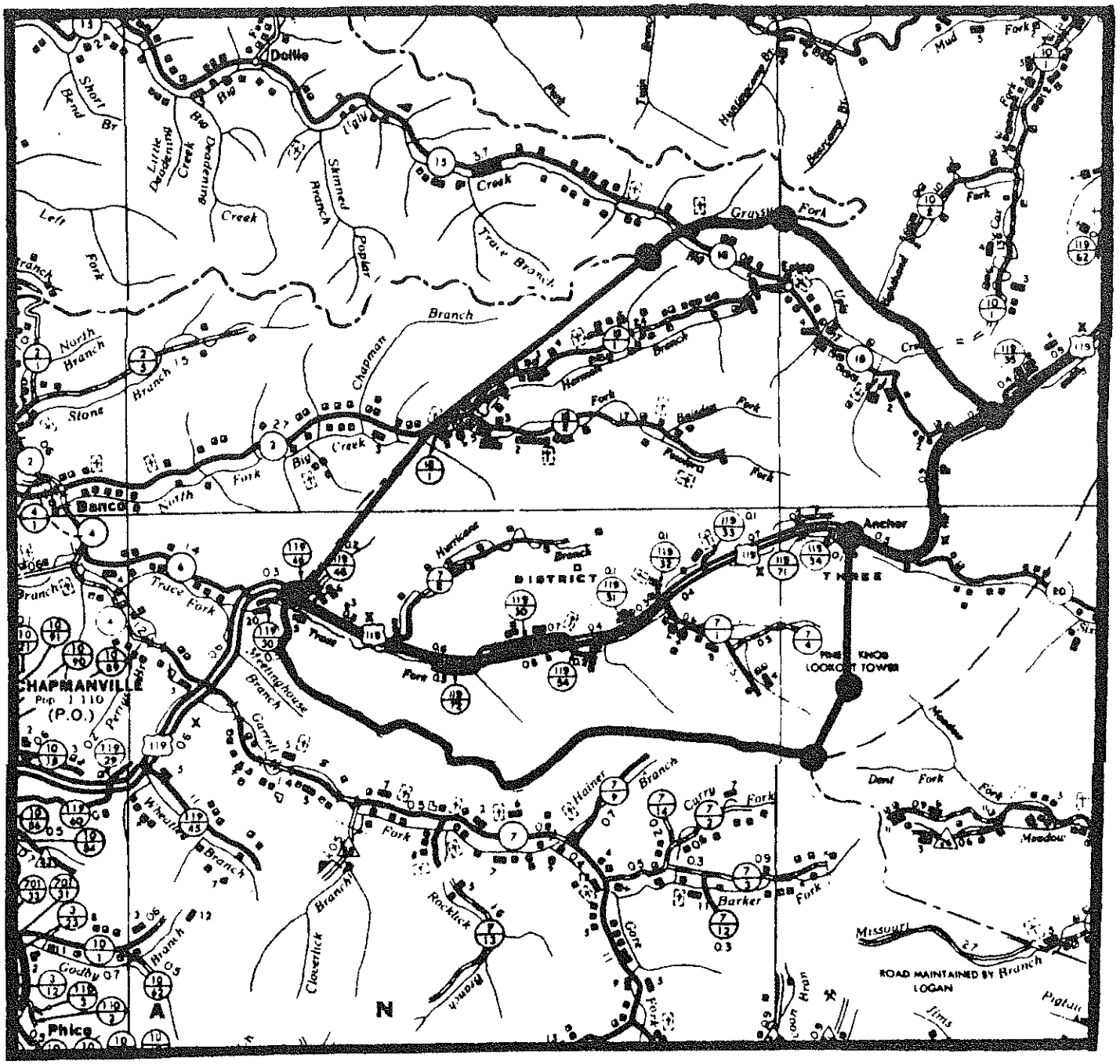
The Clerk of the County Commission of Boone County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places within the Boone County Public Service District boundaries.

All persons residing in or owning or having any interest in property within the Boone County Public Service District boundaries shall have an opportunity to be heard for or against this proposed reduction in area. At this hearing, the Boone County Commission shall consider and determine the feasibility of reducing the area of the Boone County Public Service District.

ENTERED this the 6th day of February, 2007.

Mickey Brown

Harry M. (Mickey) Brown, President
BOONE COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# IN THE COUNTY COMMISSION OF BOONE COUNTY, WEST VIRGINIA

RECEIVED
2007 FEB 12 AM 9:1
WV PUBLIC SERVICE
COMMISSION
CHARLESTON, WEST VIRGINIA
OFFICE

## RE: RESOLUTION TO REDUCE THE AREA OF THE BOONE COUNTY PUBLIC SERVICE DISTRICT

On this the 6th day of February, 2007, the Boone County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to reduce the area of the Boone County Public Service District.

**WHEREAS,** on the 11th day of January, 1999, the Boone County Commission upon its own order approved the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, and

**WHEREAS,** on July 18, 1999, the West Virginia Public Service Commission issued a Final Order adopting the resolution and order of the Boone County Commission authorizing the consolidation of the Coal River Public Service District, Van Public Service District, Danville Public Service District and the Boone County Public Service District in Case No. 99-0108-PSWD-PC; and,

**WHEREAS,** the resulting Boone County Public Service District now includes certain unserved areas within its boundaries that are generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County and being more accurately described as follows:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18,

thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**WHEREAS,** it is now proposed by the Boone County Commission to reduce the area of the Boone County Public Service District as established by Boone County Commission Order dated January 11, 1999 by removing that certain area generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County, the boundaries of which are more particularly described above and shown on the attached map, marked Exhibit A.

**WHEREAS,** it is hereby **ORDERED** that a hearing be held on this matter to reduce the area of the Boone County Public Service District. It is further **ORDERED** that a hearing will be held on this matter on the 6th day of MARCH, 2007, at 2:00 o'clock P m., in the Boone County Commission Chambers, Boone County Courthouse Annex, 3rd Floor, Madison, West Virginia.

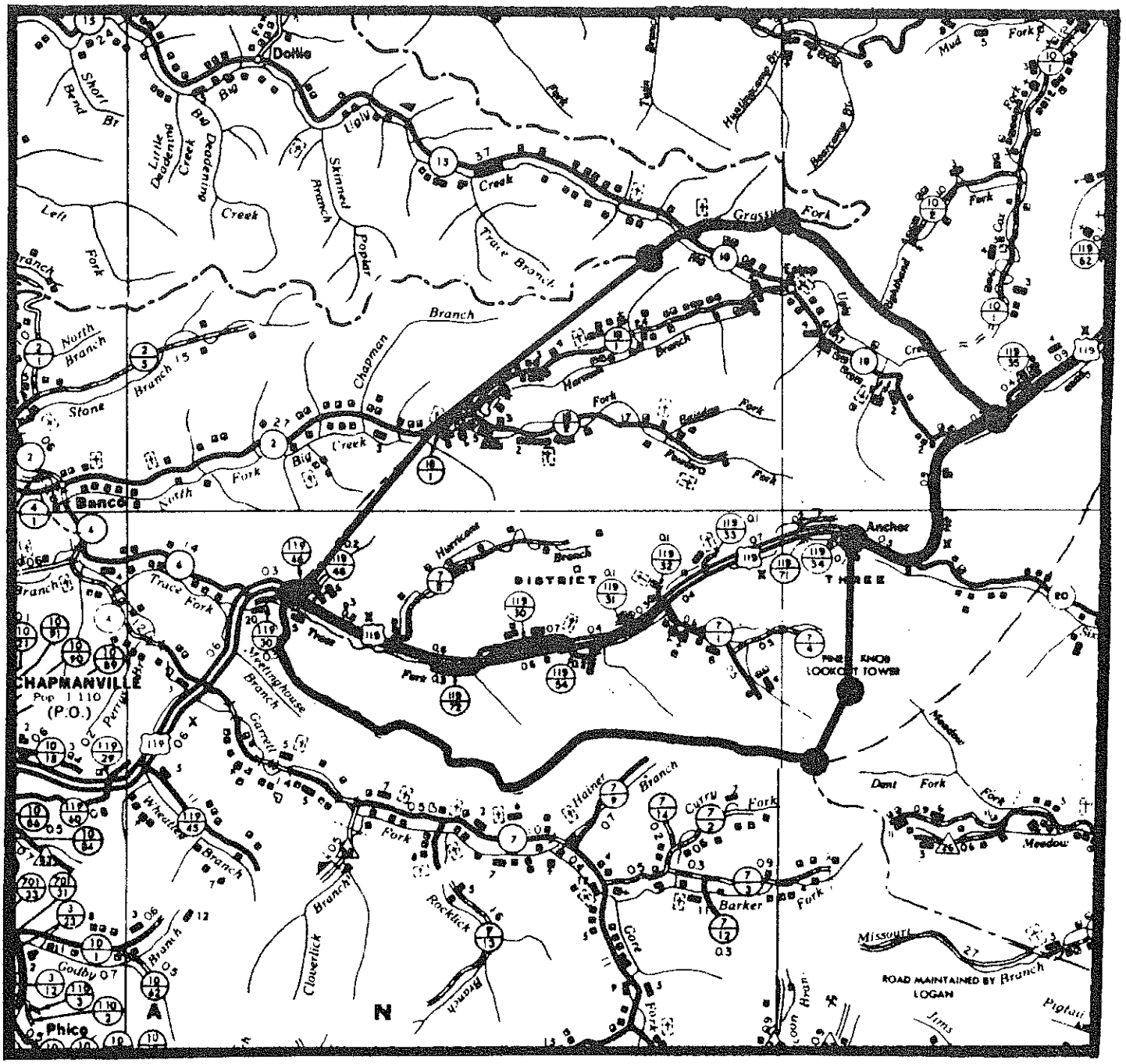
The Clerk of the County Commission of Boone County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places within the Boone County Public Service District boundaries.

All persons residing in or owning or having any interest in property within the Boone County Public Service District boundaries shall have an opportunity to be heard for or against this proposed reduction in area. At this hearing, the Boone County Commission shall consider and determine the feasibility of reducing the area of the Boone County Public Service District.

ENTERED this the 6th day of February, 2007.

Mickey Brown

Harry M. (Mickey) Brown, President
BOONE COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

Feb 8, 2007

RECEIVED
2007 FEB 7 AM 9:15
WV PUBLIC SERVICE COMMISSION
OFFICE OF

# IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO ENLARGE THE SIZE OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan County Public Service District that certain area or part of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County.

**WHEREAS,** on the 30th day of June, 1975, the Logan County Commission upon its own motion by Order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

**WHEREAS,** the Logan County Commission ordered at that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

**WHEREAS,** it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

**WHEREAS,** it is hereby proposed that the area or part of Boone County included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000

feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**THEREAS,** it is hereby **ORDERED** that a hearing be set on this motion to enlarge the size of the Logan County Public Service District by including that part of Boone County which is contained in the above described territory. It is further **ORDERED** that a hearing will be held on this matter on the 7th day of March, 2007, at 3 o'clock P m., in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

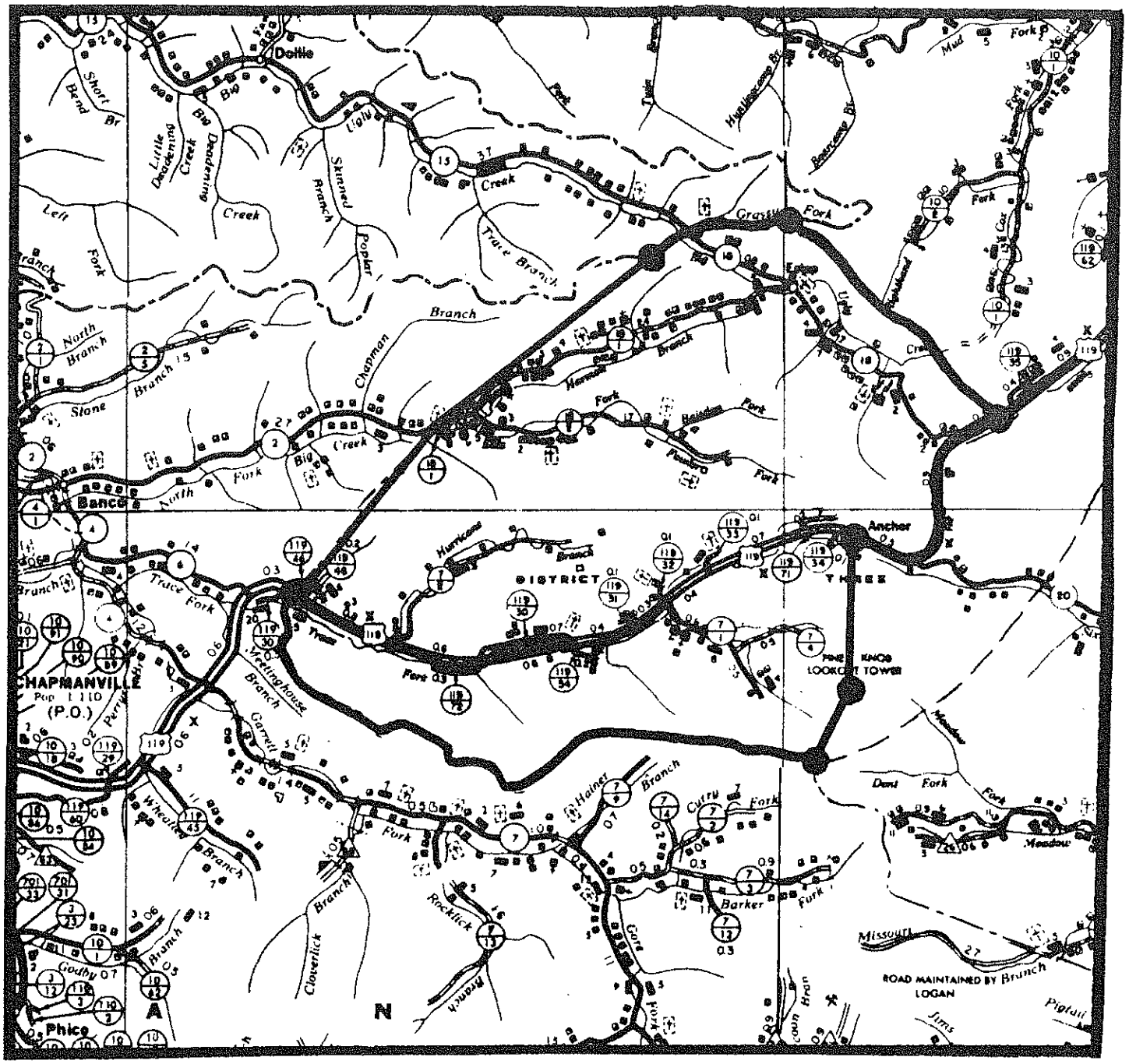
The Clerk of the County Commission of Logan County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in the Logan Banner, a newspaper of general circulation in and around Logan County, West Virginia, at least ten (10) days prior to said hearing. In addition, notice of this hearing shall be posted in not less than five (5) conspicuous places within Logan County Public Service District's territory.

The Clerk of the County Commission of Logan County, West Virginia, shall provide the Clerk of the County Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places in the area to be included in the Logan County Public Service District.

All persons residing in or owning or having any interest in property in such proposed area to be included in the Logan County Public Service District shall have an opportunity to be heard for or against this proposal. At this hearing, the County Commission of Logan County, before which the hearing will be conducted, shall consider and determine the feasibility of enlarging the size of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

## RE: ENLARGEMENT OF LOGAN COUNTY PUBLIC SERVICE DISTRICT

**WHEREAS,** on the 8th day of February, 2007, pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, the County Commission of Logan County, West Virginia, upon its own motion, entered an order proposing the enlargement of Logan County Public Service District into the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County, West Virginia; and,

**WHEREAS,** the County Commission of Boone County, West Virginia, has consented to have this area included within the boundary of the Logan County Public Service District by resolution, which is attached hereto, and incorporated as part hereof; and

**WHEREAS,** pursuant to said motion, on March 7, 2007 at 3:00 o'clock p.m., there was a public hearing at Room 104 of the Logan County Courthouse, Logan, West Virginia, held in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, with the proper notices of publication and all persons residing in or on or having any interest in property in said proposed additional territory had an opportunity to be heard for and against its enlargement at which hearing the County Commission of Logan County, West Virginia, determined that the enlargement of Logan County Public Service District to include the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County, West Virginia was feasible and would be conducive to the preservation of public health, comfort and convenience of said area. Therefore, upon proper motion and second, the County Commission of Logan County, West Virginia, does hereby **ORDER** the enlargement of and does enlarge the Logan County Public Service District under the provisions of Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, to have all of the powers numerated in said Chapter and Article. Said Public Service District shall continue to be know as Logan County Public Service District.

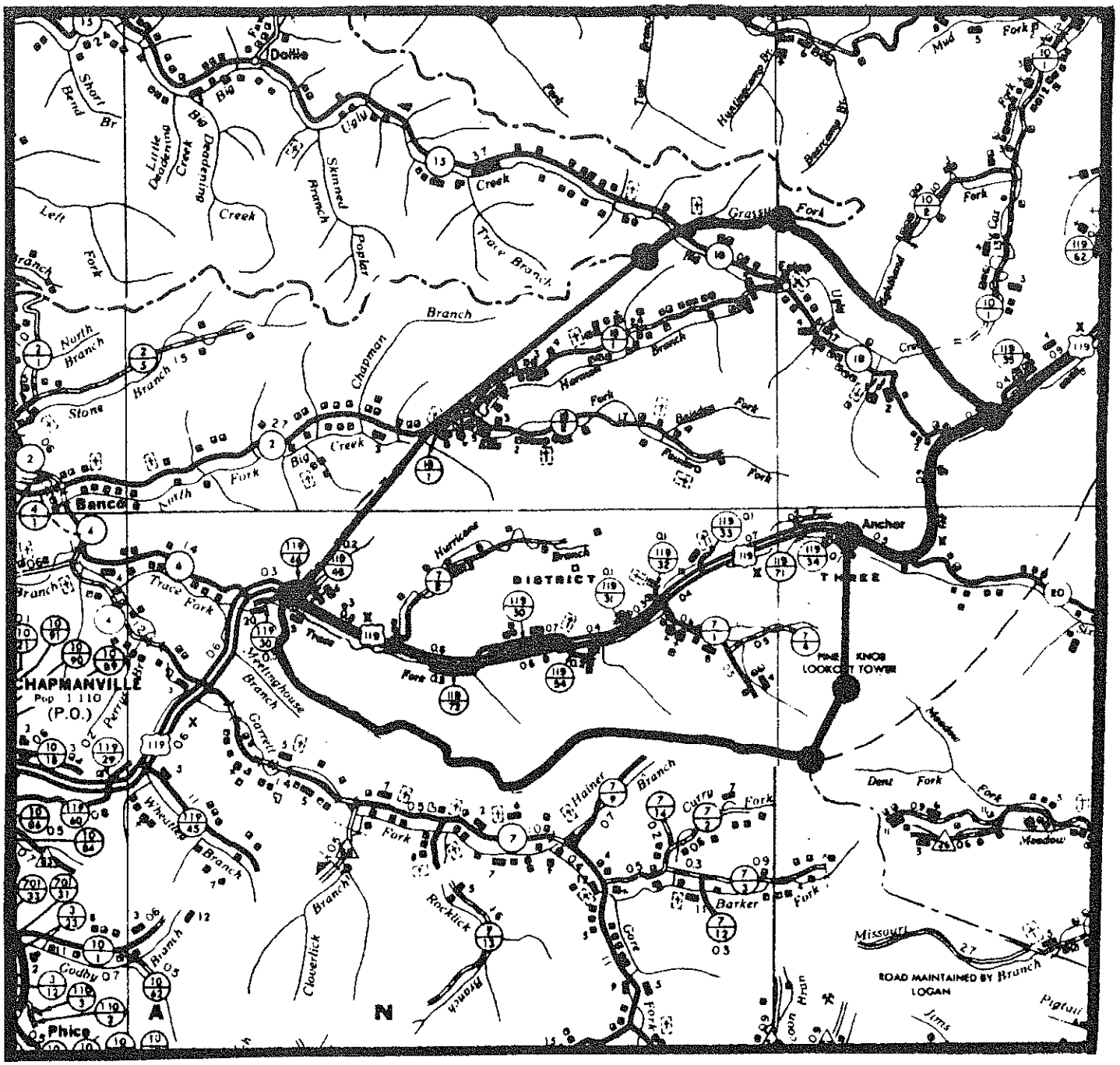
It is further **ORDERED** that the area or portion of Boone County to be included in the Logan County Public Service District is as follows and indicated on the attached map marked as Exhibit A.

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

The enlargement of Logan County Public Service District as ordered herein shall be effective on the date of the Final Order approving the enlargement being issued by the Public Service Commission of West Virginia.

**ENTERED** this the 7th day of March, 2007.

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# RESOLUTION

**WHEREAS,** on the 8th day of February, 2007, the County Commission of Logan County, West Virginia adopted an order proposing the enlargement of the Logan County Public Service District to include the following territory in Boone County as further identified on the attached map marked as Exhibit A:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**WHEREAS,** previously on the 6th day of February, 2007, the County Commission of Boone County, West Virginia, adopted an order reducing the size of the Boone County Public Service District by deleting the above described territory in Boone County as further identified on the attached map marked as Exhibit A from the Boone County Public Service District.

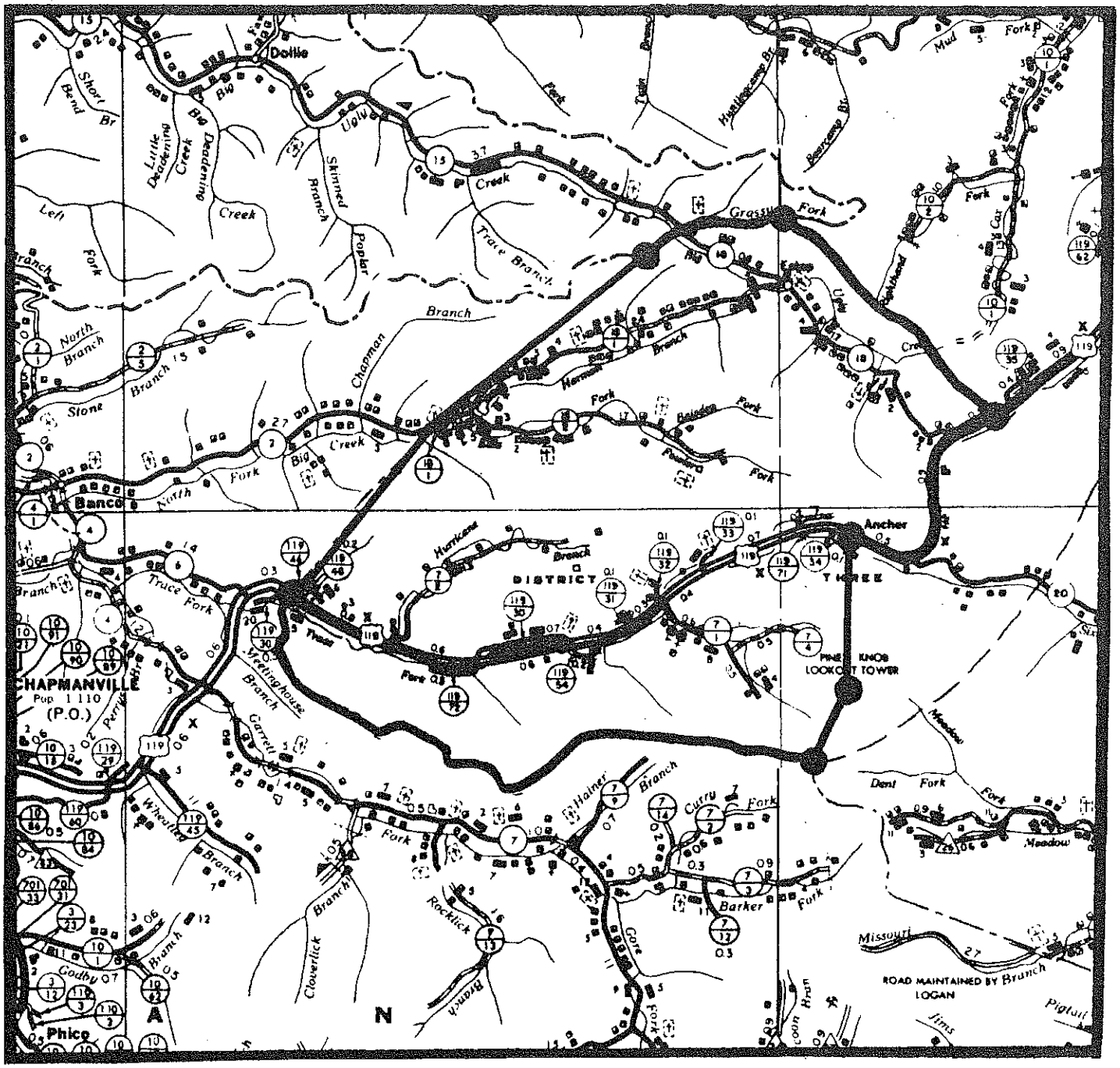
**THEREFORE**, the area of Boone County to be included in Logan County Public Service District is not included within the boundaries of any existing Public Service District; and,

**WHEREAS**, the County Commission of Boone County, West Virginia believes that the inclusion of the afore-described territory in the Logan County Public Service District will be conducive to the preservation of the public health, comfort and convenience of the residents of this area of Boone County;

**THEREFORE BE IT RESOLVED** that the County Commission of Boone County, West Virginia, does hereby consent to the enlargement of Logan County Public Service District to include the above described territory.

Adopted this 6th day of March, 2007.

Harry M. (Mickey) Brown, President
BOONE COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO ENLARGE THE SIZE OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan County Public Service District that certain area or part of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County.

**WHEREAS,** on the 30th day of June, 1975, the Logan County Commission upon its own motion by Order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

**WHEREAS,** the Logan County Commission ordered at that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

**WHEREAS,** it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

**WHEREAS,** it is hereby proposed that the area or part of Boone County included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000

feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**THEREAS,** it is hereby **ORDERED** that a hearing be set on this motion to enlarge the size of the Logan County Public Service District by including that part of Boone County which is contained in the above described territory. It is further **ORDERED** that a hearing will be held on this matter on the 7th day of March, 2007, at 3 o'clock P. m., in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

The Clerk of the County Commission of Logan County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in the Logan Banner, a newspaper of general circulation in and around Logan County, West Virginia, at least ten (10) days prior to said hearing. In addition, notice of this hearing shall be posted in not less than five (5) conspicuous places within Logan County Public Service District's territory.

The Clerk of the County Commission of Logan County, West Virginia, shall provide the Clerk of the County Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places in the area to be included in the Logan County Public Service District.

All persons residing in or owning or having any interest in property in such proposed area to be included in the Logan County Public Service District shall have an opportunity to be heard for or against this proposal. At this hearing, the County Commission of Logan County, before which the hearing will be conducted, shall consider and determine the feasibility of enlarging the size of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

Arthur E. Kirkendoll

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION

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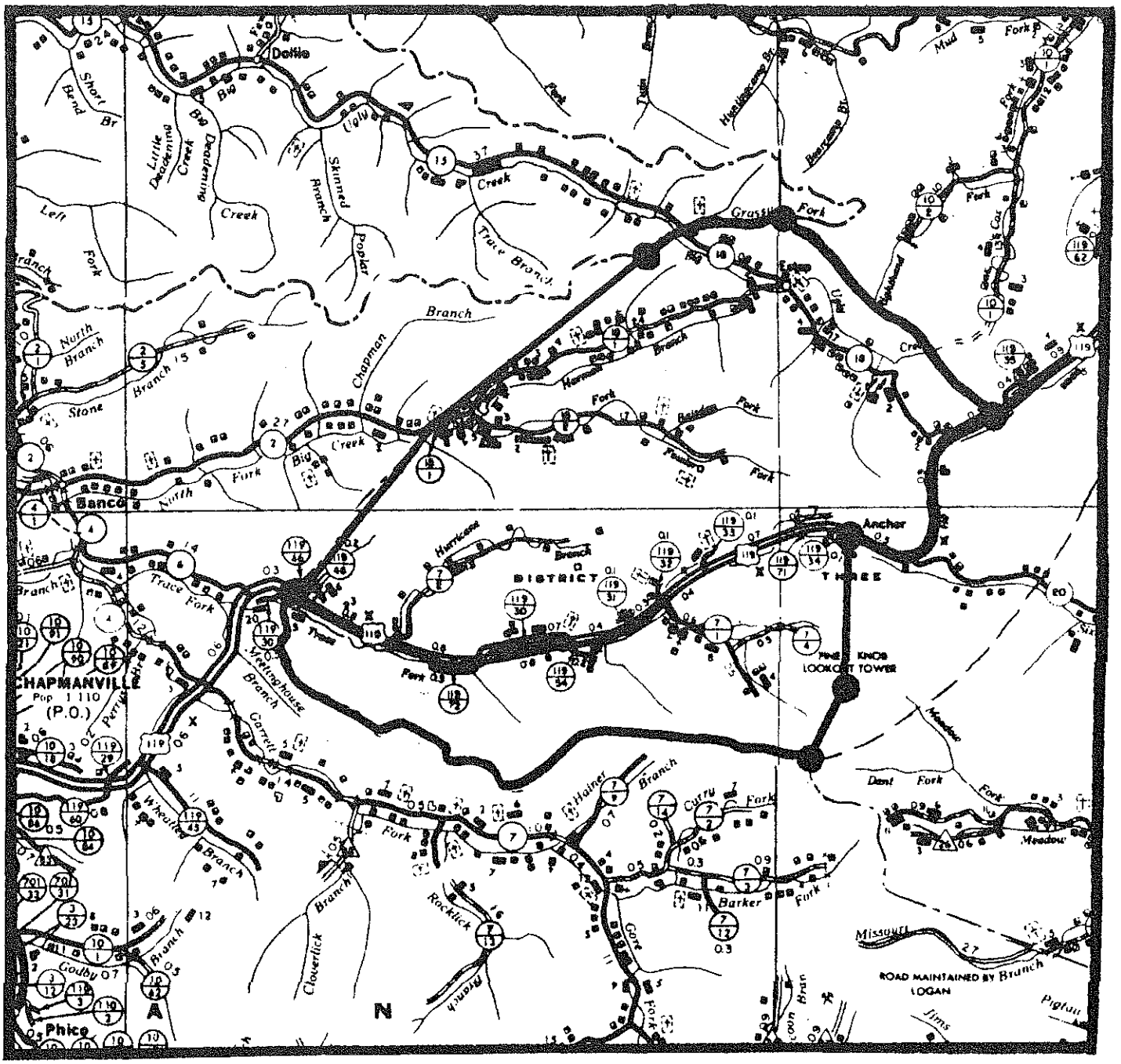



# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO ENLARGE THE SIZE OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan County Public Service District that certain area or part of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County.

**WHEREAS,** on the 30th day of June, 1975, the Logan County Commission upon its own motion by Order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

**WHEREAS,** the Logan County Commission ordered at that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

**WHEREAS,** it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

**WHEREAS,** it is hereby proposed that the area or part of Boone County included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000

feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**THEREAS,** it is hereby **ORDERED** that a hearing be set on this motion to enlarge the size of the Logan County Public Service District by including that part of Boone County which is contained in the above described territory. It is further **ORDERED** that a hearing will be held on this matter on the 7th day of March, 2007, at 3 o'clock P m., in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

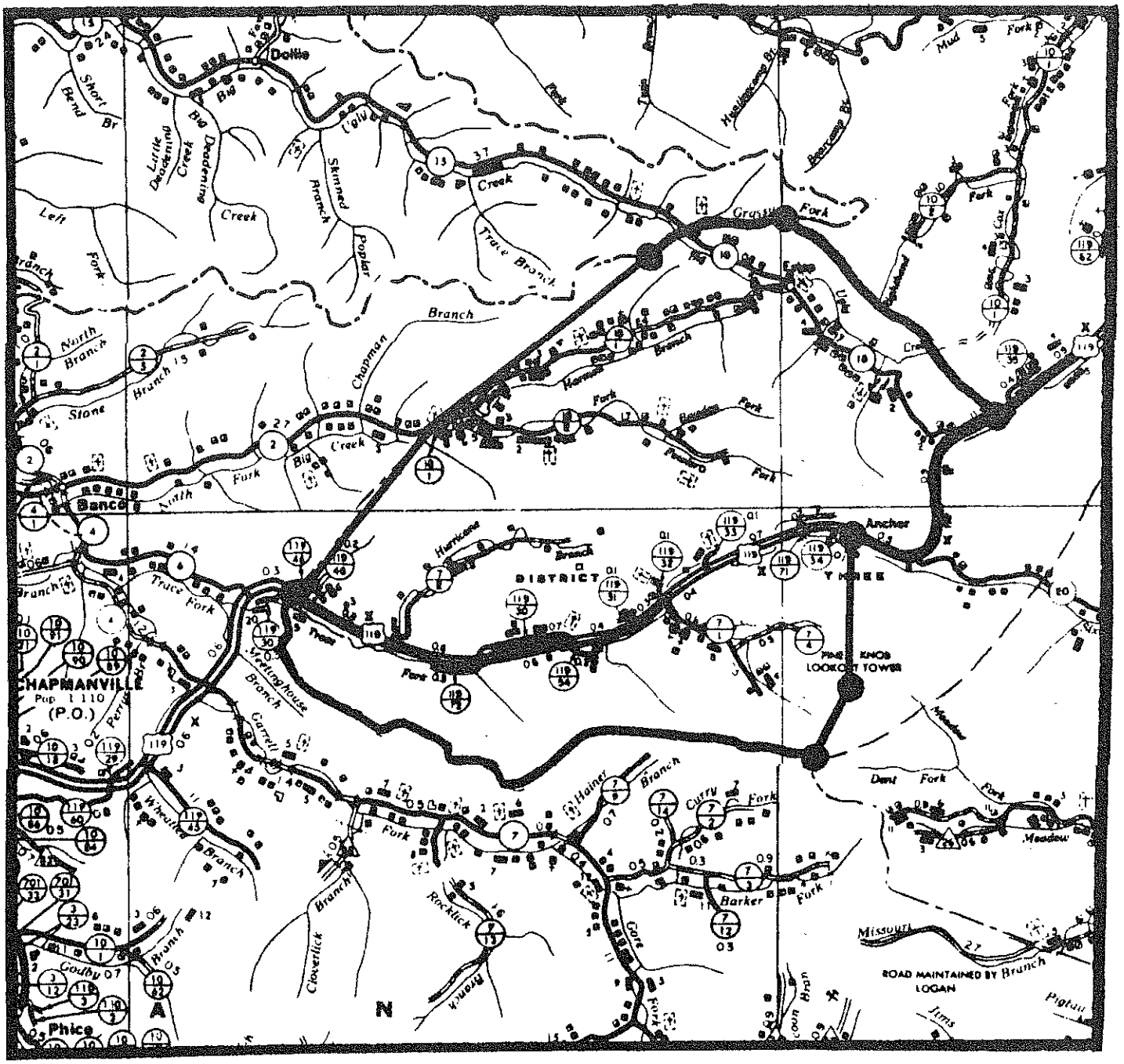
The Clerk of the County Commission of Logan County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in the Logan Banner, a newspaper of general circulation in and around Logan County, West Virginia, at least ten (10) days prior to said hearing. In addition, notice of this hearing shall be posted in not less than five (5) conspicuous places within Logan County Public Service District's territory.

The Clerk of the County Commission of Logan County, West Virginia, shall provide the Clerk of the County Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places in the area to be included in the Logan County Public Service District.

All persons residing in or owning or having any interest in property in such proposed area to be included in the Logan County Public Service District shall have an opportunity to be heard for or against this proposal. At this hearing, the County Commission of Logan County, before which the hearing will be conducted, shall consider and determine the feasibility of enlarging the size of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

I, Richard Osborne, publisher of THE LOGAN BANNER, a newspaper published in Logan County, West Virginia, do hereby certify that the annexed notice was published in said paper for 1 successive time(s) on the following date(s):

February 14th, 2007

Given under my hand this 20th day of February, 2007

PUBLISHER

State of West Virginia
County of Logan, to-wit:

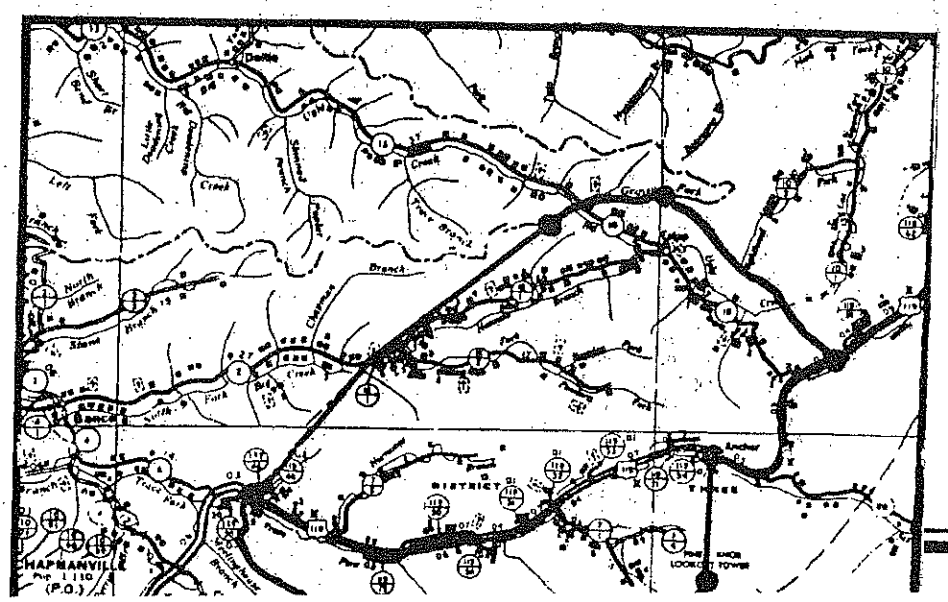
Subscribed and sworn before me this 20th day of February, 2007

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DOTTIE J. HATFIELD
405 Wilson Street
Logan, West Virginia 25601
My Commission Expires March 19, 2013

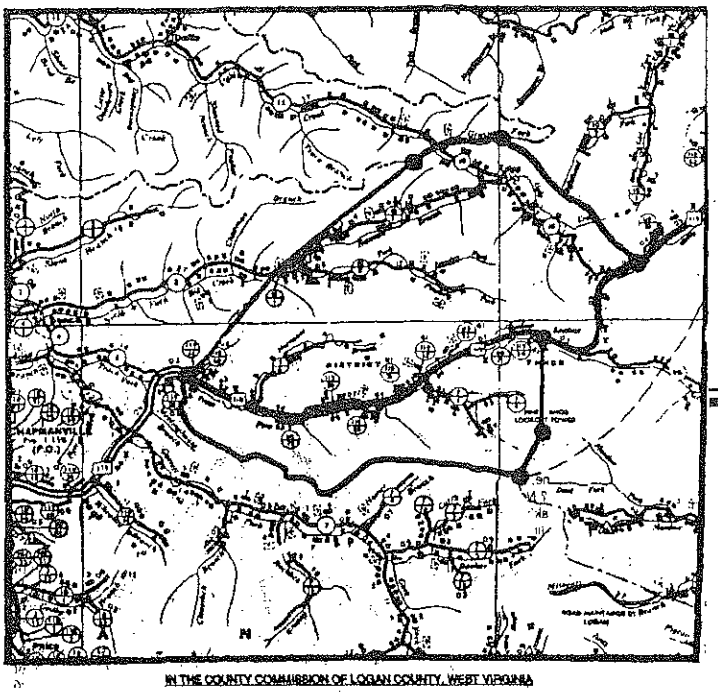
NOTARY PUBLIC

Cost of Publication: 336.09

COPY OF PUBLICATION



COPY OF PUBLICATION



IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

RE: RESOLUTION TO ENLARGE THE SIZE OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan county Public Service District that certain area or part of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County.

WHEREAS, on the 30th day of June, 1975, the Logan County Commission upon its own motion by Order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

WHEREAS, the Logan County Commission ordered at that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

WHEREAS, it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

WHEREAS, it is hereby proposed that the area or part of Boone County included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U. S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more of less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000 feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet of the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and BooneCounty line in a southwesterly direction approximately 15,220 feet, more or less, to a point of beginning.

THEREAS, it is hereby ORDERED that a hearing be set on this motion to enlarge the size of the Logan County Public Service District by including that part to Boone County which is contained in the above described territory. It is further ORDERED that a hearing will be held on this matter on the 7th day of March, 2007, at 9 o'clock p.m., in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

The Clerk of the County Commission of Logan County, West Virginia shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in the Logan Banner, a newspaper of general circulation in and around Logan County, West Virginia, at least ten (10) days prior to said hearing. In addition, notice of this hearing shall be posted in not less than five (5) conspicuous places with Logan County Public Service Territory.

The Clerk of the County Commisaron of Logan County, West Virginia, shall provide the Clerk of the County Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places in the area to be included in the Logan County Public Service District.

All persons residing in or owing or having any interest in property in such proposed area to be included in Logan County Public Service District shall have an opportunity to be heard for or against this proposal. At this hearing, the County Commission of Logan County, before which the hearing will be conducted, shall consider and determine the feasibility of enlarging the size of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA
COUNTY OF BOONE, to-wit:

I, Timothy Kiger, being duly sworn, upon my oath, do depose and say that I am Publisher of the corporation entitled Community First Holdings, Inc., publishers of the COAL VALLEY NEWS, that such newspaper has been published for more than one year prior to publication of the approved notice described below; that such newspaper is regularly published weekly, for at least fifty weeks during the calendar year, in the municipality of Madison, Boone County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, 1931, as amended, within the publication area of the aforesaid municipality; that such newspaper averages in length four or more pages, exclusive of any cover per issue; that such newspaper is a newspaper to which the general public resorts for passing events 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 Logan County Public Service District - Logan County Commission

was duly published in the COAL VALLEY NEWS once a week for 1successive

weeks (Class I), commencing with the issue of the 14th day of February, 2007,

and ending with the issue of the 14th day of February, 2007,

that said annexed notice was published on the following dates:

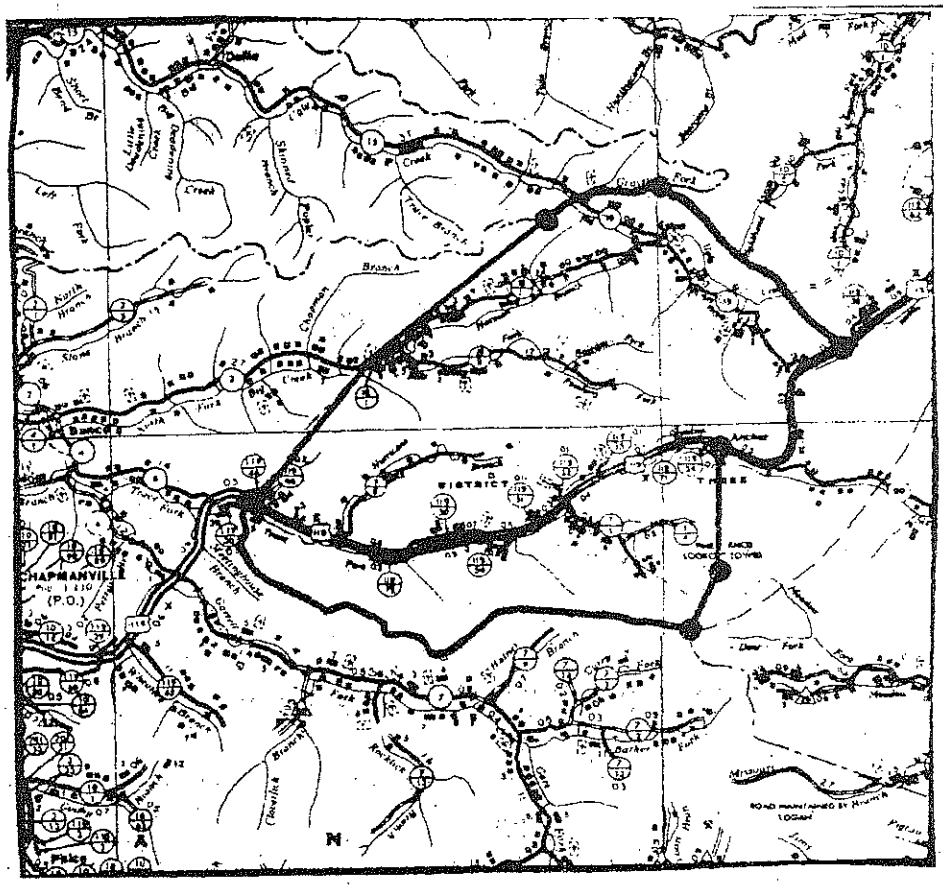
2-14, 2006

and the cost of publishing said annexed notice as aforesaid was $352.80

Taken, subscribed and sworn to before me in my said county this 14th Day of February, 2007.
My commission expires January 9, 2017.

Notary Public of Boone County
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LORETTA JOHNSON
350 CONNIE LANE
DANVILLE, WV 25053
My commission expires January 9, 2017




# EXHIBIT A

(Scale: 1" = 1 Mile)

ADVERTISEMENT
IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA
RE: RESOLUTION TO REDUCE THE AREA OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan Public Service District that certain area or part of Boone County that is generally located in the Souther US 119, North Fork and Big Ugly Road areas of Boone County.

WHEREAS, on the 130th day of June, 1975, the Logan County Commission upon its own order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended .

WHEREAS, the Logan County Commission order t that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

WHEREAS, it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern US 119, North Fork and Big Ugly areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

WHEREAs, it is hereby proposed that the area or part of Boone county included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the US 119 right-of-way and the Logan and Boone County line, thence the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northwesterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the US 119 right-of-way located 2,000 feet northeast of the intersection of US 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln county lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,2220 feet, more or less, to the point of beginning.

WHEREAS, it is hereby ORDERED that a hearing be set on this motion to enlarge the size of the Logan County Public Service District. It is further ORDERED that a hearing will be held on this matter on the 7th day of March, 2007, at 3:00 o'clock p.m, in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

The Clerk of the County Commission of Logan County, West Virginia, shall provide the Clerk of the county Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class 1 legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places within the Logan County Public Service District boundaries.

All persons residing in or owning or having any interest in property within the Logan County Public Service District boundaries shall have an opportunity to be heard for or against this proposed reduction in area. At this hearing, the Boone County Commission shall consider and determine the feasibility of enlarging the area of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

/S/ Arthur E. Kirkendoll, President

# CERTIFICATION

I, Charles R. Roberts, Jr., Managing Engineer, Logan County Public Service District do hereby certify that I posted or caused to be posted the attached notice in such locations within the area of Logan County Public Service District and on such dates as listed below.

| LOCATION | DATE POSTED |
|---|---|
| Logan County PSD Office | February 21, 2007 |
| Logan County Courthouse | February 21, 2007 |
| U.S. Post Office, Logan | February 21, 2007 |
| Lowes, Logan | February 21, 2007 |
| U.S. Post Office, Chapmanville | February 21, 2007 |
| Town & Country Foodland, Chapmanville | February 21, 2007 |
| U. S. Post Office, Man | February 21, 2007 |
| McNeely's Do It Center, Man | February 21, 2007 |

Signature

February 22, 2007
Date

STATE OF WEST VIRGINIA
COUNTY OF LOGAN, TO-WIT:

Acknowledged before me this 22nd day of February, 2007, by Charles R. Roberts, Jr., Managing Engineer, Logan County Public Service District.

SEAL

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MELINDA GULLETT
P O. BOX 803
LOGAN, WV 25601
My Commission Expires June 18, 2007

My commission expires June 18, 2007.

Notary Public

# IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO ENLARGE THE SIZE OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan County Public Service District that certain area or part of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County.

**WHEREAS,** on the 30th day of June, 1975, the Logan County Commission upon its own motion by Order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

**WHEREAS,** the Logan County Commission ordered at that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

**WHEREAS,** it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

**WHEREAS,** it is hereby proposed that the area or part of Boone County included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000

feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**THEREAS,** it is hereby **ORDERED** that a hearing be set on this motion to enlarge the size of the Logan County Public Service District by including that part of Boone County which is contained in the above described territory. It is further **ORDERED** that a hearing will be held on this matter on the 7th day of March, 2007, at 3 o'clock P.M., in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

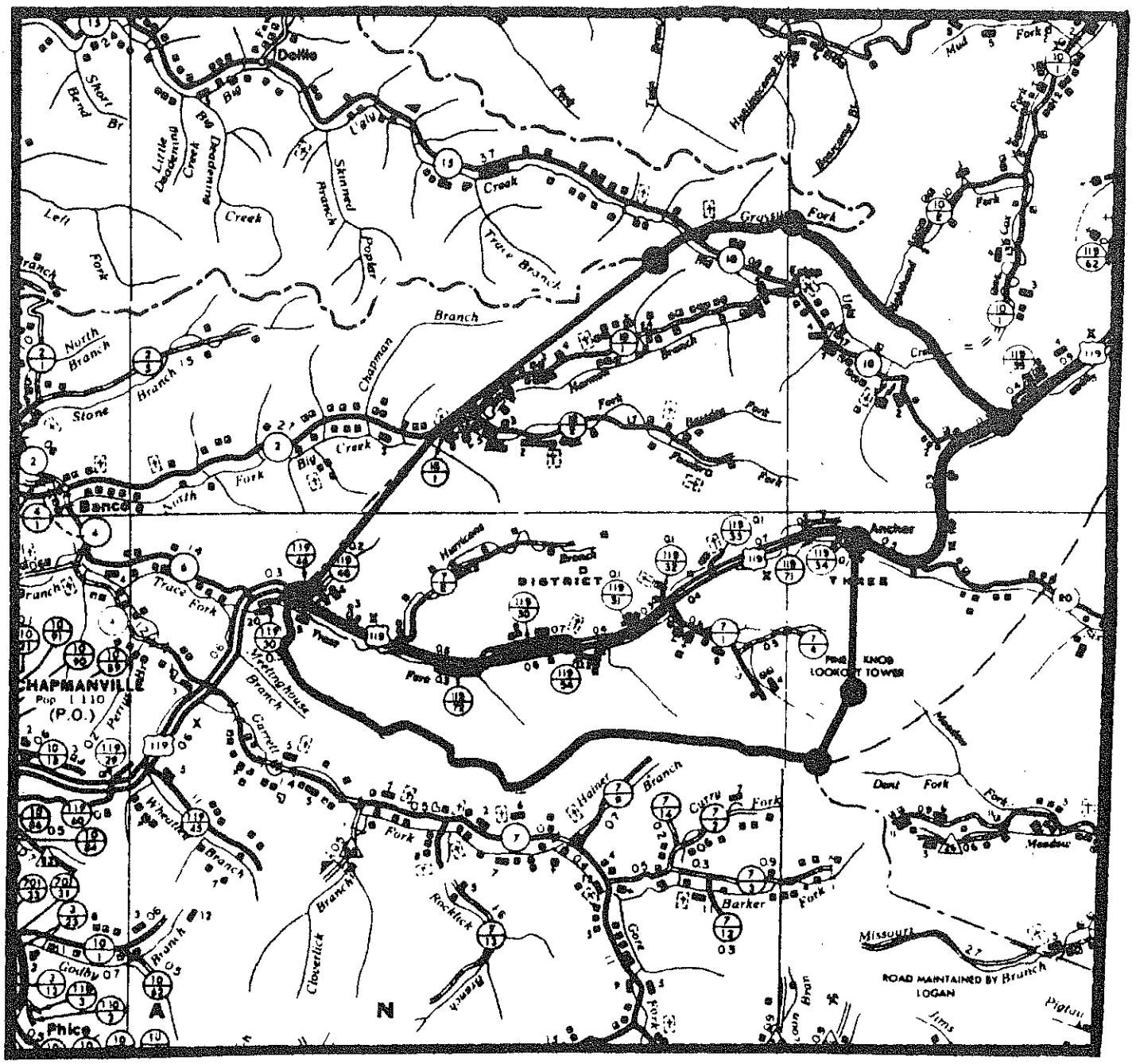
The Clerk of the County Commission of Logan County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in the Logan Banner, a newspaper of general circulation in and around Logan County, West Virginia, at least ten (10) days prior to said hearing. In addition, notice of this hearing shall be posted in not less than five (5) conspicuous places within Logan County Public Service District's territory.

The Clerk of the County Commission of Logan County, West Virginia, shall provide the Clerk of the County Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places in the area to be included in the Logan County Public Service District.

All persons residing in or owning or having any interest in property in such proposed area to be included in the Logan County Public Service District shall have an opportunity to be heard for or against this proposal. At this hearing, the County Commission of Logan County, before which the hearing will be conducted, shall consider and determine the feasibility of enlarging the size of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

# CERTIFICATION

I, Charles R. Roberts, Jr., Managing Engineer, Logan County Public Service District do hereby certify that I posted or caused to be posted the attached notice in such locations within the area of Boone County within the existing boundaries of the Boone County Public Service District and on such dates as listed below.

| LOCATION | DATE POSTED |
|---|---|
| Boone County PSD Office | February 21, 2007 |
| Boone County Courthouse | February 21, 2007 |
| U.S. Post Office, Danville | February 21, 2007 |
| Krogers, Madison | February 21, 2007 |
| Traders Town | February 21, 2007 |
| Boone Truck Driving Academy | February 21, 2007 |
| American Coal Testing | February 21, 2007 |
| The Home Place | February 21, 2007 |

Charles R. Roberts, Jr.
Signature

February 22, 2007
Date

STATE OF WEST VIRGINIA
COUNTY OF LOGAN, TO-WIT:

Acknowledged before me this 22nd day of February, 2007, by Charles R. Roberts, Jr., Managing Engineer, Logan County Public Service District.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MELINDA GULLETT
P.O. BOX 803
LOGAN, WV 25601
My Commission Expires June 18, 2007

My commission expires June 18, 2007

Melinda Gullett
Notary Public

# IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

## RE: RESOLUTION TO ENLARGE THE SIZE OF THE LOGAN COUNTY PUBLIC SERVICE DISTRICT

On this the 8th day of February, 2007, the Logan County Commission upon its own motion pursuant to Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended, proposed to enlarge the area of the Logan County Public Service District by including in the Logan County Public Service District that certain area or part of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County.

**WHEREAS,** on the 30th day of June, 1975, the Logan County Commission upon its own motion by Order duly adopted, created the Logan County Public Service District in accordance with Chapter 16, Article 13A, Section 2 of the West Virginia Code of 1931, as amended.

**WHEREAS,** the Logan County Commission ordered at that time that the Logan County Public Service District shall include all of Logan County with certain areas being excepted which were duly listed in said Order.

**WHEREAS,** it is now proposed by the Logan County Commission that the certain part or area of Boone County that is generally located in the Southern U.S. 119, North Fork and Big Ugly Road areas of Boone County be included in the Logan County Public Service District and thereby enlarge the size of the Logan County Public Service District.

**WHEREAS,** it is hereby proposed that the area or part of Boone County included in the following described territory and indicated on the attached map marked as Exhibit A, shall be included in the Logan County Public Service District:

> Beginning at a point near the Logan County/Boone County community of Sunset View at the intersection of the midpoint of the U.S. 119 right-of-way and the Logan and Boone County line, thence, following the meanderings of said Logan and Boone County line in a easterly direction approximately 25,080 feet, more or less, to a point on the Logan and Boone County line at the head of Dent Fork of Meadow Fork, thence, following a straight line in a northeasterly direction approximately 2,910 feet, more or less, to a point directly under the Piney Knob Lookout Tower, thence, following a straight line due north approximately 5,320 feet, more or less, to a point in the center of the U.S. 119 right-of-way approximately 1,000 feet east of the Anchor Road Exit of U.S. 119, thence, following the centerline of the U.S. 119 right-of-way in a northeasterly direction approximately 9,240 feet, more or less, to a point in the center of the U.S. 119 right-of-way located 2,000

feet northeast of the intersection of U.S. 119 and County Route 18, thence, following an imaginary line located northeast of County Route 18 and parallel with County Route 18 in a northwesterly direction approximately 10,560 feet, more or less, to a point on the Boone County and Lincoln County line located 2,000 feet northeast of the intersection of said Boone County and Lincoln County line and County Route 18, thence, following the meanderings of the Boone County and Lincoln County line in a southwesterly direction approximately 5,810 feet to the intersection of the Logan County, Boone County and Lincoln County lines, thence following the Logan County and Boone County line in a southwesterly direction approximately 18,220 feet, more or less, to the point of beginning.

**THEREAS,** it is hereby **ORDERED** that a hearing be set on this motion to enlarge the size of the Logan County Public Service District by including that part of Boone County which is contained in the above described territory. It is further **ORDERED** that a hearing will be held on this matter on the 7th day of March, 2007, at 3 o'clock P m., in Room 104 of the Logan County Courthouse, Logan, Logan County, West Virginia.

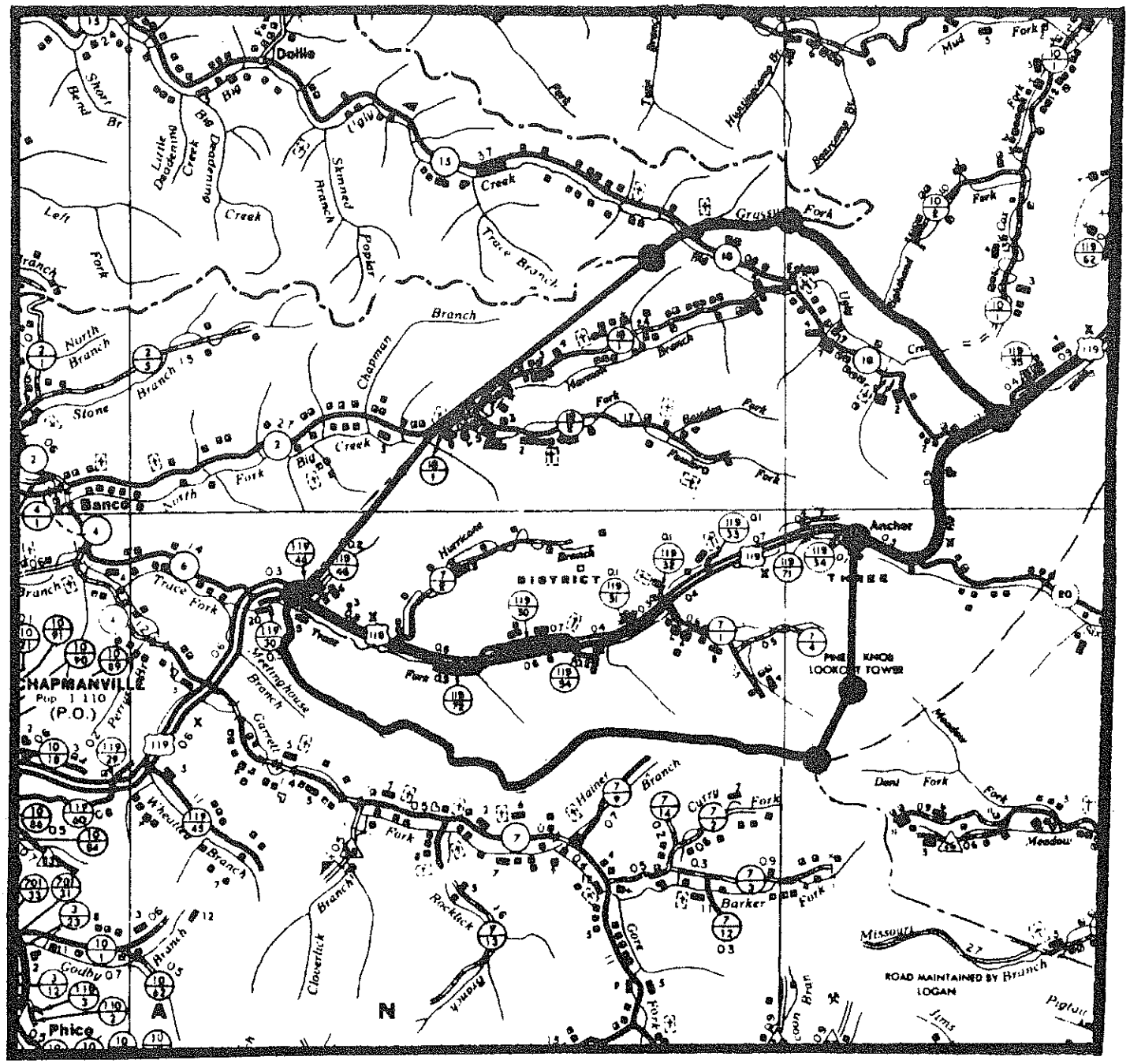
The Clerk of the County Commission of Logan County, West Virginia, shall cause a notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in the Logan Banner, a newspaper of general circulation in and around Logan County, West Virginia, at least ten (10) days prior to said hearing. In addition, notice of this hearing shall be posted in not less than five (5) conspicuous places within Logan County Public Service District's territory.

The Clerk of the County Commission of Logan County, West Virginia, shall provide the Clerk of the County Commission of Boone County, West Virginia, a copy of the notice of this hearing and the time and place thereof to be published as a Class I legal advertisement in a newspaper of general circulation in Boone County, West Virginia, at least ten (10) days prior to said hearing and to be posted in not less than five (5) conspicuous places in the area to be included in the Logan County Public Service District.

All persons residing in or owning or having any interest in property in such proposed area to be included in the Logan County Public Service District shall have an opportunity to be heard for or against this proposal. At this hearing, the County Commission of Logan County, before which the hearing will be conducted, shall consider and determine the feasibility of enlarging the size of the Logan County Public Service District.

ENTERED this the 8th day of February, 2007.

Arthur E. Kirkendoll, President
LOGAN COUNTY COMMISSION




# EXHIBIT A

**(Scale: 1" = 1 Mile)**

June 25, 2007

070295coma062507.wpd

# 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 25th . day of June, 2007.

CASE NO. 07-0295-PSWD-PC

LOGAN COUNTY COMMISSION and
BOONE COUNTY COMMISSION
Petition for consent and approval to enlarge the boundaries of the Logan County Public Service District and reduce the boundaries of the Boone County Public Service District.

## COMMISSION ORDER

By this Order, the Public Service Commission ("Commission") approves a petition for consent and approval to enlarge the boundaries of the Logan County Public Service District ("Logan County PSD") and reduce the boundaries of the Boone County Public Service District ("Boone County PSD").

## BACKGROUND

On March 12, 2007, the Logan County PSD, a water and sewer public service district, filed, on behalf of the Logan County Commission ("Logan County"), a petition for consent and approval to enlarge the boundaries of the Logan County PSD to include certain areas currently located within the Boone County PSD, also a water and sewer public service district.

By order entered February 8, 2007, Logan County fixed a date for public hearing on the proposed expansion of the boundaries of the Logan County PSD. Logan County provided notice of the hearing by publication in *The Logan Banner* and the *Coal Valley News* on February 14, 2007. Additionally, Logan County provided notice by posting in at least five (5) conspicuous places in the area to be affected, as evidenced by the Certification of Posting filed with the Commission.

Logan County entered an order on March 7, 2007, approving the proposed enlargement of the Logan County PSD. Logan County's order included a description, by metes and bounds, of the area to be included in the enlargement as well as a map of the affected area. Logan County's order identified the enlargement to include the Southern U. S. 119, North Fork and Big Ugly Road areas of Boone County, West Virginia. Furthermore, the order indicated that the Logan County PSD shall continue to be known as the Logan County Public Service District.

Also on March 12, 2007, the Logan County PSD filed, pursuant to *West Virginia Code* §16-13A-2 and on behalf of the Boone County Commission ("Boone County"), a petition for consent and approval to reduce the boundaries of the Boone County PSD.

By order entered February 6, 2007, Boone County, proposed the reduction of the boundaries of the Boone County PSD and scheduling the matter for public hearing. Boone County provided notice of the public hearing by publication in the *Coal Valley News* on February 14, 2007. Additionally, Boone County provided notice by posting in at least five (5) conspicuous places in the area to be affected, as evidenced by the Certification of Posting filed with the Commission. Boone County entered an order on March 6, 2007, reducing the area of the Boone County PSD. The boundaries identified in the March 6, 2007, Boone County order are identical to those identified in the March 7, 2007 Logan County order.

Commission Staff ("Staff") filed an "Initial and Final Joint Staff Memorandum" on March 30, 2007. Recognizing the discrepancy between *West Virginia Code* §16-13A-2 and Rule 7.3.a. of the Commission's *Rules for the Government of Sewer Utilities*, Staff recommended that notice of the proceeding before the Commission should be published and an opportunity to protest should be provided. Staff noted that the Commission had elected to proceed in this manner in *Cabell County Commission*, Case No. 05-1019-PSD-PC (November 9, 2007). Staff recommended that if substantial protests are filed, then the Commission may determine that a hearing is necessary.

The Commission issued an Order on April 18, 2007, directing Logan County and Boone County to publish a "Notice of Filing" indicating that this proceeding was currently before the Commission. The Logan County PSD filed, on behalf of Logan County and Boone County, two affidavits of publication evidencing publication of the Commission's "Notice of Filing" in the *Coal Valley News* and *The Logan Banner* on April 25, 2007.

No protests were filed.

## DISCUSSION

*West Virginia Code* §16-13A-2 establishes the requirements for modifying public service district boundaries and merging districts. In accordance with that procedure, Boone County issued an order approving the reduction of the Boone County PSD and Logan County issued an order approving the enlargement of the Logan County PSD. However, no order of a county commission regarding public service district boundary modification can be effective without approval of the Commission.

The Commission has discretion to determine whether or not a hearing is needed in boundary modification cases. See, *W. Va. Code* § 16-13A-2. No protests have been received in response to the filing of this case or in response to the public notice published on April 25, 2007. Based upon the foregoing, the Commission will not schedule a hearing in this matter.

Rule 8.4.a. of the Commission's *Rules for the Government of Water Utilities* ("*Water Rules*") and Rule 7.4.a. of the Commission's *Rules for the Government of Sewer Utilities* ("*Sewer Rules*") are identical and state:

> After public comment and hearing the Commission shall, by order, approve, disapprove or modify a county commission order creating, expanding, merging, consolidating, reducing or dissolving a public service district. In deliberating on approval, modification or disapproval the Commission may consider, among other things:
>
> 1. the public convenience and necessity;
>
> 2. the economic feasibility, including sources of funding, costs and related benefits of the county commission's order;
>
> 3. the adequacy of facilities;
>
> 4. other facilities in the area; and
>
> 5. other possible alternatives.

In light of these considerations and based upon the matters contained in the record and the Staff recommendation, the Commission will approve the revised boundary modifications and the reduction of the Boone County PSD and enlargement of the Logan County PSD.

## FINDINGS OF FACT

1. On March 12, 2007, the Logan County PSD filed, on behalf of Logan County, a petition for consent and approval to enlarge the boundaries of the Logan County PSD. On the same day, the Logan County PSD filed, on behalf of Boone County, a petition for consent and approval to reduce the boundaries of the Boone County PSD. Both petitions for consent and approval were filed pursuant to *West Virginia Code* §16-13A-2.

2. After notice and hearing in each county, Logan County and Boone County each issued an order approving the boundary modification.

3. Notice of the pendency of this proceeding at the Commission was published and the public was given an opportunity to protest.

4. No protests have been received.

5. Staff recommended that the boundary modifications, as described in the March 12, 2007 filings made on behalf of Boone County and Logan County, be approved.

## CONCLUSIONS OF LAW

1. No order issued by a county commission regarding public service district boundary modifications can be effective without approval of the Commission. See, *W. Va. Code* § 16-13A-2.

2. No protests have been filed; therefore, a hearing on the proposed boundary modifications will not be required.

3. Giving due consideration to the requirements of Rule 8.4. a. of the *Water Rules* and Rule 7.4.a. of the *Sewer Rules*, it is appropriate to approve the Boone County PSD's boundary reduction and the Logan County PSD's boundary enlargement as set forth in the March 12, 2007 filings on behalf of Logan County and Boone County.

## ORDER

IT IS, THEREFORE, ORDERED that the March 6, 2007 Order of the Boone County Commission reducing the boundaries of the Boone County Public Service District is hereby approved.

IT IS FURTHER ORDERED that the March 7, 2007 Order of the Logan County Commission enlarging the boundaries of the Logan County Public Service District is hereby approved.

IT IS FURTHER ORDERED that upon entry of this Order, this case shall be removed from the Commission's docket of active cases.

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

A True Copy, Teste:

Sandra Squire
Executive Secretary

SMS/las
070295ca.wpd

At a REGULAR session of the County Commission of Boone County, West Virginia, held at the Courthouse thereof on the 6th day of March 2007, the following order was made and entered:

SUBJECT: REAPPOINT GRADY HAYNER TO THE BOONE COUNTY PUBLIC SERVICE DISTRICT

The following motion was offered by Commissioner Eversole:

That the Boone County Commission does hereby reappoint Grady Hayner to the Boone County Public Service District for a term of 6 years said term to expire March 20, 2013.

A copy of this order to be sent to the Boone County Public Service District and to Grady Hayner.

The adoption of the foregoing motion, having been made by Commissioner Eversole and duly seconded by Commissioner Halstead, the vote thereon was as follows:

Mickey Brown, President..... AYE

Gordon Eversole, Commissioner..... AYE

Atholl W. Halstead, Commissioner..... AYE

Whereupon, Mickey Brown, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

Mickey Brown, President

Gordon Eversole, Commissioner

Atholl W. Halstead, Commissioner

RECEIVED
BOONE COUNTY
PUBLIC SERVICE DISTRICT
07 MAR 28 AM 9:52

At a REGULAR session of the County Commission of Boone County, West Virginia, held at the Courthouse thereof on the 6th day of March, 2007 the following order was made and entered:

SUBJECT: REAPPOINT MARY K. ROY TO THE BOONE COUNTY PUBLIC SERVICE DISTRICT

The following motion was offered by Commissioner Halstead:

That the Boone County Commission does hereby reappoint Mary K. Roy to the Boone County Public Service District for a term of 6 years said term to expire March 30, 2013.

A copy of this order to be sent to Boone County Public Service District and to Mary K. Roy.

The adoption of the foregoing motion, having been made by Commissioner Halstead and duly seconded by Commissioner Eversole, the vote thereon was as follows:

Mickey Brown, President.....AYE

Gordon Eversole, Commissioner.....AYE

Atholl W. Halstead, Commissioner.....AYE

Whereupon, Mickey Brown, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

Mickey Brown, President

Gordon Eversole, Commissioner

Atholl W. Halstead, Commissioner

RECEIVED
BOONE COUNTY DISTRICT
07 MAR 28 AM 9:53

At a REGULAR session of the County Commission of Boone County, West Virginia, held at the Courthouse thereof on the 1st day of March, 2005, the following order was made and entered:

SUBJECT: REAPPOINT BROADDUS LORRISON AND CLARENCE V. WALLER TO THE BOONE COUNTY PUBLIC SERVICE DISTRICT

The following motion was offered by Commissioner Gordon Eversole:

That the Boone County Commission does hereby reappoint Broaddus Lorrison and Clarence V. Waller to the Boone County Public Service District for terms of 6 years said terms to expire April 1, 2011.

A copy of this order to be sent to Broaddus Lorrison, Clarence V. Waller and the Boone County Public Service District.

The adoption of the foregoing motion, having been made by Commissioner Gordon Eversole and duly seconded by Atholl W. Halstead, Commissioner, the vote thereon was as follows:

Mickey Brown, President.....AYE

Gordon Eversole, Commissioner .....AYE

Atholl W. Halstead, Commissioner.....AYE

Whereupon, Mickey Brown, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

Mickey Brown, President

Gordon Eversole, Commissioner

Atholl W. Halstead, Commissioner

George Parsons
P.O. Box 215
Peytona, WV 25154
304-836-8110

Term of Office
Aug. 04, 2010-Aug. 04, 2014

# OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, TO-WIT:

I, George Parsons do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia and that I will faithfully discharge the duties of the office of Boone County Public Service District to the best of my skill and judgment, SO HELP ME GOD.

George Parsons

Subscribed and sworn to before me, in Madison, Boone County, West Virginia, on the 4th day of August, 2010.

Honorable Mickey Brown

State of West Virginia,

Boone County Commission Clerk's Office, August 4, 2010

The foregoing OATH OF OFFICE AND CERTIFICATE was this day admitted to record in my said office.

Gary W. Williams, Boone County Clerk

# OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, TO-WIT:

I, Grady Hayner do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia and that I will faithfully discharge the duties of the office of Boone County Public Service District Board to the best of my skill and judgment, SO HELP ME GOD.

Grady Hayner

Subscribed and sworn to before me, in Madison, Boone County, West Virginia, the 15th day of May, 2007.

Honorable Mickey Brown, President
Boone County Commission

State of West Virginia,

Boone County Commission Clerk's Office, May 15, 2007

The foregoing OATH OF OFFICE AND CERTIFICATE was this day admitted to record in my said office.

BOONE COUNTY W.V.A. COUNTY COMMISSION

Gary W. Williams, Boone County Clerk

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, TO WIT:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia and that I will faithfully discharge the duties of the office of **Boone County Public Service District** to the best of my skill and judgement, SO HELP ME GOD.

Subscribed and sworn to before me, in my said County and State, this 1 day of February, 2008

Gary N. Williams
Clerk of the County Commission of
Boone County, West Virginia

State of West Virginia,

Boone County Commission Clerk's Office, Feb 1, 2008

The foregoing OATH OF OFFICE AND CERTIFICATE was this day admitted to record in my office.

Teste: Shawn Linville

# OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, TO-WIT:

I, Mary K. Roy do solemnly swear that I will support the Constitution of the United States of America and the Constitution of the State of West Virginia and that I will faithfully discharge the duties of the office of Boone County Public Service District to the best of my skill and judgment, SO HELP ME GOD.

RECEIVED
2007 APR -4 A 9:31
GARY W. WILLIAMS
BOONE COUNTY CLERK

Mary Katrina Roy
Mary K. Roy

Subscribed and sworn to before me, in Madison, Boone County, West Virginia, the 3rd day of April, 2007.

Atholl W. Halstead
Honorable Atholl W. Halstead
Boone County Commission

State of West Virginia,

Boone County Commission Clerk's Office, April 3, 2007

The foregoing OATH OF OFFICE AND CERTIFICATE was this day admitted to record in my said office.

Gary W. Williams
Gary W. Williams, Boone County Clerk

# RULES OF PROCEDURE

# BOONE COUNTY PUBLIC SERVICE DISTRICT

## ARTICLE I

## NAME AND PLACE OF BUSINESS

Section 1. Name: BOONE COUNTY PUBLIC SERVICE DISTRICT.

Section 2. The principal office of this Public Service District will be located in the Danville Community Center on Hopkins Avenue, Danville, Boone County, West Virginia.

Section 3. The Common Seal of the District shall consist of two concentric circles between which circles shall be inscribed Boone County Public Service District, and in the center shall be inscribed the Corporate Seal.

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

## ARTICLE II

## PURPOSE

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

## ARTICLE III

## MEMBERSHIP

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

Section 2. Should any member of the Public Service Board resign or otherwise become legally disqualified to serve as a member of the Public Service Board, the Secretary shall immediately notify the County Commission or other entity provided

under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Public Service Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Public Service Board.

## ARTICLE IV

## MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Public Service Board of this District shall hold regular monthly meetings on the second Monday of each month, at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Public Service Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Public Service Board of the District, three (3) members shall constitute a quorum. Each member of the Public Service Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise agreed, notice to members of regular meetings shall not be required. Unless otherwise waived, notice of each special meeting of the membership shall be given to all members by the Secretary by fax, telephone, mail or other satisfactory means at least three (3) days before the date fixed for such a special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

## PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931 as amended (1999 Revision), notice of the date, time, place and agenda of all regularly scheduled meetings of such Public Service Board, and the date, time, place and purpose of all special meetings of such Public Service Board, shall be made available, in advance, to the public and news media (except in the event of an emergency requiring immediate action ) as follows:

A. Regular Meetings. A notice shall be posted and maintained by the Secretary of the Public Service Board of the Public Service District

at the front door or bulletin board of the Boone County Courthouse and at the front door or bulletin board of the place fixed for regular meetings of the Public Service Board of the date, time and place fixed and entered of record by the Public Service Board for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same locations by the Secretary for the Public Service Board not less than 72 hours before such regular meeting is to be held. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the same locations as soon as feasible after such cancellation or postponement has be determined.

B. Special Meetings. A notice shall be posted by the Secretary of the Public Service Board at the front door or bulletin board of the Boone County Courthouse and at the front door or bulletin board of the place fixed for the regular meetings of the Public Service Board not less than 72 hours before a specially scheduled meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the same locations as soon as feasible after such cancellation has been determined.

## ARTICLE V

## OFFICERS

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

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

## ARTICLE VI

## DUTIES OF OFFICERS

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

Section 2. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. The Secretary shall, together with the Chairman, sign the minutes of the meetings at which he or she is present. The Secretary shall have charge of the minute book, be the custodian of the Common Seal of the District and all deeds and other writings and papers of the Board. The secretary shall also perform such other duties as he or she may have under law by virtue
of the office or as my be conferred from time to time by the members of the Board, these Rues of Procedure or as prescribed by law.

Section 3. The Treasurer shall be the lawful custodian of all funds of the District and shall disburse funds of the District on orders authorized or approved by the board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 4. If the Chairman, Secretary or Treasurer is absent from any meeting, the remaining members of the Board shall select a temporary chairman, secretary or treasurer, as necessary, who shall have all the powers of the absent officer during such period of absence.

## ARTICLE VII

## AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended, repealed or added to at any regular or special meeting of the Board by a majority vote of the entire Board,

or at any regular or special meeting of the members when a quorum is present in person and a majority of those present vote for the amendment, but no such change, alteration, amendment, repeal or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment, repeal or addition and a clear statement of the substance thereof be included in the written notice calling such meeting.

These Rules of Procedure shall replace any and all previous rules of procedure, bylaws or similar rules heretofore adopted by the District.

Adopted this 10th day of July, 2006.

Boone County Public Service District:

By: _____

Its: Chairman

ATTEST:

Grady Hayner, Secretary/Treasurer

Broaddus Lorrison, Commissioner

MARY KATRINE ROY, Commissioner

PAUL RITCHIE, Commissioner

# H. Wyatt Hanna III
## Attorney at Law

H. Wyatt Hanna, III WV State Bar No. 1579

P. O. Box 8070 • South Charleston, West Virginia 25303
(304) 744-3150 • Fax (304) 744-3157



RECEIVED
10 MAR 16 PM 12:45
W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE


March 16, 2010

Ms. Sandra Squire
Director-Executive Secretary Division
Public Service Commission of WV
201 Brooks Street
Charleston, WV 25301

RE: Case No. 10-0260-PWD-PW-CN
Boone County Public Service District
Turtle Creek Water Extension Project

Dear Ms. Squire:

I represent Boone County Public Service District with regard to the above referenced certificate proceeding. As such, enclosed please find the original and twelve (12) copies of an Affidavit of Publication from the Coal Valley News which indicates that the District's Notice of Filing was published in said newspaper on March 10, 2010.

If you should have any questions regarding this matter, please do not hesitate to contact my office.

Sincerely,

H. Wyatt Hanna, III

HWHIII/rb
Enclosures
cc: Boone County PSD
Terry Martin
Terry Moran, PE

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA
COUNTY OF BOONE, to-wit:

I, Angie M Alexander-Adkins, being duly sworn, upon my oath, do depose and say that I am General Manager of the corporation entitled Heartland Publications LLC, publishers of the COAL VALLEY NEWS, that such newspaper has been published for more than one year prior to publication of the approved notice described below; that such newspaper is regularly published weekly, for at least fifty weeks during the calendar year, in the municipality of Madison, Boone County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, 1931, as amended, within the publication area of the aforesaid municipality; that such newspaper averages in length four or more pages, exclusive of any cover per issue; that such newspaper is a newspaper to which the general public resorts for passing events 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 NOTICE OF FILING

was duly published in the COAL VALLEY NEWS once a week for 1 successive weeks (Class ), commencing with the issue of the 10 day of MARCH, 2010 and ending with the issue of the 10 day of MARCH, 2010,

that said annexed notice was published on the following dates:

2-24 3-3, 2010

and the cost of publishing said annexed notice as aforesaid was $337.20

Angela M Alexander-Adkins

Taken, subscribed and sworn to before me in my said county this 12 Day of March, 2010.

Michele E Thompson
Notary Public of Boone County
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
MICHELE E. THOMPSON
51 JOSEPHINE AVE.
MADISON, WV 25130
My commission expires January 26, 2019

March 2010. CASE NO. 10-0260-PWD-PW-GN

BOONE COUNTY PUBLIC SERVICE DISTRICT
Application for a certificate of convenience and necessity to construct a potable water line extension to serve approximately 181 new customers in the Turtle Creek/Corridor G area that will extend the District's potable water distribution system operated by West Virginia-American Water Company, and petition for waiver of the obligation to file a Rule 42 Exhibit

NOTICE OF FILING

On March 1, 2010, the Boone County Public Service District (District) filed an application, duly verified, for a Certificate to construct a potable water line extension to serve approximately 181 new customers in the Turtle Creek/Corridor G area that will extend the Boone County PSD's potable water distribution system operated by West Virginia-American Water Company, in Boone County, West Virginia. The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West Virginia.
The District estimates that construction will cost approximately $3,355,635. It is proposed that the construction will be financed as follows:
The project will be financed with a Grant in the amount of $348,635.00 from the West Virginia Infrastructure and Jobs Development Council; a Loan in the amount of $1,062,000.00 from the West Virginia Infrastructure and Jobs Development Council for a term of 40 years at an interest rate of 0%; A contribution in aid of construction in the approximate amount of $1,500,000.00 from U.S. Army Corps of Engineers (the Public Service Commission previously approved this Grant in a Final Order issued on September 14,2008, in Case No. 08-1413-PWD-PC); A contribution in the amount of $300,000.00 from the Boone County Commission (Grant); and, a contribution in aid of construction in the amount of $145,000.00 from the West Virginia-American Water Company.
rn-f l c service Lommission
of West Virginia
Charleston
The utility does not anticipate having to increase its existing water rates and charges as a result of this filing with the Public Service Commission of West Virginia. The District's existing water rates and charges for its customers are as follows:
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER RATES AND CHARGES
The customer rates and charges will be the current rates and charges, or any modification relating thereto, established for West Virginia-American Water Company as the same are contained in the District's current Tariff on file with the Public Service Commission of West Virginia. These rates and charges were issued under authority of an Order of the Public Service Commission in Case No. 08-0900-W-42T (West Virginia-American Water Company) and were effective for all service rendered on or after March 26,2009. The District's current rates and charges as contained in its P.S.C. W.Va. Tariff No. 8 are as follows:
AVAILABILITY OF SERVICE
Available for all residential, commercial, and industrial service.
RATE

| | |
|---|---|
| first | 1,500 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.2022 per 1,000 gallons |
| Next | 870,000 gallons used per month $8.0698 per 1,000 gallons |
| Next | 8,100,1300 gallons used per month $4.4090 per 1,000 gallons |
| All Over | 9,000,900 gallons used per month $2.6660 per 1,000 gallons |

MINIMUM CHARGE
No bill shall be rendered for less than the following amount, according to the size of the meter installed, to-wit: for customers having multiple meter settings, the minimum charge will be the sum of the minimum charges for each of the individual meters:

| | |
|---|---|
| 3/4 inch meter or less | $ 20.75 per month |
| 1 inchmeter | $ 50.84 permonth |
| 1 - 1/2 inch meter | $ 100.99 per month |
| 2 inch meter | $ 161.21 permonth |
| 3 inch meter | $ 301.68 per month |
| 4 inch meter | $ 502.34 per month |
| 6 inch meter | $1,004.01 per month |
| 8 inch meter | $1'606.04 per month |

* All residential customers shall be served through a 5/8" meter, provided, however, that the Company may install a larger meter when reasonably necessary. This restriction shall not apply to residential meters currently in service.
of West Virginia
Charleston 2
AVAILABILITY
Available for resale service.
RATE

| | |
|---|---|
| First | 1,600 gallons used per month at the minimum charge |
| Next | 28,500 gallons used per month $9.2022 per 1,000 gallons |
| Nex | 870,000 gallons used per month $8.0053 per 1,000 gallons |
| Next | 8,100,000 gallons used per month $4.6 120 per 1,000 gallons |
| All Over | 9,000,000 gallons used per month $3.2506 per 1,000 gallons |

MINIMUM CHARGE
No bill will be rendered for less than the following amounts, according to the size of the meter installed, to-wit: for customers having multiple meter settings, the minimum charge will be sum of the minimum charges for each of the individual meters:
3/4 inch meter or less $ 20.75 permonth
1 inchmeter $ 50.84 permonth
1 - 1 /2 inch meter $ 100.99 permionth
2 inch meter $ 161.21 per month
3 inch meter $ 301.68 per month
4 inch meter $ 502.34 permonth
6 inch meter $1,004.01 per month
8 inch meter $1,606.04 per month

INCREMENTAL COST OF WATER
$ .39 per 1,000 gallon. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter.
This rate shall be applied to all such unusual consumption above the customer's historical average usage.
DELAYED PAYMENT PENALTY
The Company's tariffs are net. On all current usage bills not paid within twenty-one (21) days of the date of bill, ten percent (10%) will be added to the net amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.
RETURNED CHECK CHARGE
A service charge equal to the actual bank fee assessed to the Company, not to exceed $15.00, will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.
rudnc service Lommission
of West Virginia
Charleston 3
RECONNECTION CHARGE
When it has been necessary to discontinue water service to any premises on account of non-payment of any charges for water service, a charge of twenty dollars ($20.00) will be made to cover the cost of turning on the water service. This charge will not apply where the Company has a disconnection agreement with a sewer utility and is entitled to collect a reconnection charge from the sewer utility for such reconnection for non-payment of sewer charges. This charge may be added to a past due balance and included in the outstanding balance under a deferred payment agreement.
SERVICE CONNECTION (TAP) FEE
Applicable to the entire Service Territory of West Virginia-American Water Company.
AVAILABILITY OF SERVICE
Available for residential, commercial, industrial, other public authority and sales for resale customers.
CONNECTION (TAP) FEES

| | |
|---|---|
| All Meter Sizes Connected | $300.00 |

The District, as part of this filing, is requesting a waiver of the Public Service Commission's Rule 42 requirements as the same relates to this filing due to the fact that all of the District's current water operations are in conjunction with a public-private partnership with West Virginia-American Water Company as set forth in the Operation and Maintenance Agreement and the amendments relating thereto previously approved by the Public Service Commission.
The District does not anticipate having to raise its existing rates as a result of this application. The requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. Pursuant to W. Va. Code §24-2-1 1, IT IS ORDERED that Boone County Public Service District give notice of the filing of said application, by publishing a copy of this order once in a qualified newspaper as provided in W. Va. Code §59-3-1 et seq. published and of general circulation in Boone County, making due return to this Commission of proper certification of publication immediately after publication. Anyone desiring to protest or intervene should file awritten protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increase, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P. 0. Box 8 12, Charleston, West Virginia 25323. rumc service Lommission of West Virginia Charleston 4
IT IS FURTHER ORDERED that if there is no substantial protest to the Application received within said thirty day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

# Boone Co. Public Service District

## Organization Meeting – Water Board

On Monday, January 11, 2010 the current Board members of the Boone County Public Service District Water Board met and an organizational meeting was held. The meeting was held at Danville Community Center, Room 101, Danville, West Virginia, to nominate and elect officers for the Water Board.

The current Board members are Clarence "Toby" Waller, Chairman, Grady Hayner, Secretary/Treasurer, Broaddus Lorrison, Mary Katrine Roy, and Jerry Sexton, board members. All members were present.
Nancy Shreve, secretary for the Board was present to take the minutes for this meeting.

The meeting was called to order by the Chairman, Toby Waller. The chairman asked for nominations for Secretary/Treasurer. Broaddus Lorrison made the motion to nominate and elect Grady Hayner as the Secretary /Treasurer. Jerry Sexton seconded the motion. Nominations were closed. Motion carried.
Grady Hayner accepted the position and will be the Secretary /Treasurer for the Boone County Public Service District Water Board.

The chairman asked for nominations for Chairman.
Broaddus made the motion to nominate and elect Clarence "Toby" Waller for Chairman and Grady Hayner seconded the motion. Motion carried. Nominations were closed. Motion carried.
Toby Waller accepted the position and will be Chairman of the Boone County Public Service District Water Board.

The regular monthly meeting shall be held at the Danville Community Center, Room 101, Danville, West Virginia. If the second Monday is a holiday, the meeting will be held the following day unless otherwise designated by the board.

There being no further business, Grady Hayner made the motion to adjourn, seconded by Broaddus Lorrison. Motion carried. The organizational meeting for the water board adjourned at 6:05 p.m.

The Water Board Organizational meeting was reopened to set the date and time of the monthly meeting.

Jerry Sexton made the motion to have the date for the water board meeting to be the second Monday of each month. If the second Monday falls on a holiday the meeting will be held the following day unless otherwise designated by the board. The time for water board meeting will be 6:00 p.m. Broaddus Lorrison seconded the motion.

Jerry Sexton made the motion to adjourn the organizational meeting
and Broaddus Lorrison seconded the motion.
Motion carried.

Respectfully submitted,

Nancy S. Shreve
Secretary

Approved by:

Toby Waller, Chairman

Grady Hayner, Secretary/Treasurer

Mary Katrine Roy

Jerry Sexton

**BOONE COUNTY PUBLIC SERVICE DISTRICT**

**Water Revenue Bonds, Series 2010 A**
**(West Virginia Infrastructure Fund)**

EXCERPT OF MINUTES ON ADOPTION OF BOND RESOLUTION, SUPPLEMENTAL RESOLUTION AND DRAW RESOLUTION

The undersigned SECRETARY of the Public Service Board of Boone County Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said Public Service Board:

*** *** ***

The Public Service Board of Boone County Public Service District met in regular session, pursuant to notice duly posted, on the 4th day of October, 2010, in Hardy County, West Virginia, at the hour of 11:00 a.m.

| | | |
|---|---|---|
| PRESENT: | Clarence Waller, Chairman | John Stump, Esquire |
| | Grady Hayner, Secretary | Mary Roy |
| | N. George Parson | Jerry Sexton |

Clarence Waller, Chairman, presided, and Grady Hayner, acted as Secretary. The Chairman announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Chairman presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BOONE COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $1,062,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR

THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING 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.

and caused the same to be read and there was discussion. Thereupon, on motion duly made by Grady Hayner and seconded by Jerry Sexton, it was unanimously ordered that the said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

Thereupon, the Chairman then presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF BOONE COUNTY PUBLIC SERVICE DISTRICT; AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING LETTERS OF CREDIT TO FUND THE RESERVE ACCOUNT; APPROVING THE AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Jerry Sexton and seconded by Grady Hayner, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairman presented a proposed Draw Resolution for the approval of invoices. Thereupon, on motion duly made by Grady Hayner and seconded by Jerry Sexton, it was unanimously ordered that the said Draw Resolution be adopted.

*** *** ***

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

[Remainder of Page Intentionally Blank]

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of Boone County Public Service District and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

Dated: October 14, 2010

Secretary

**WV MUNICIPAL BOND COMMISSION**
1207 Quarrier Street
Suite 401
Charleston, WV 25301
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 14-Oct-10

ISSUE: Boone County Public Service District
Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund)

ADDRESS: P.O. Box 287, Danville, West Virginia 25053 COUNTY: Boone

PURPOSE OF ISSUE:
New Money: x
Refunding:

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 14-Oct-10
CLOSING DATE: 14-Oct-10
ISSUE AMOUNT: $1,062,000
RATE: 0%
1ST DEBT SERVICE DUE: 1-Jun-12
1ST PRINCIPAL DUE 1-Jun-12
1ST DEBT SERVICE AMOUNT $6,897
PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm: Jackson Kelly, PLLC
Contact: Samme Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK:
Bank: Boone County Bank
Contact: Melissa Summers
Phone: 304.369.2407

ESCROW TRUSTEE:
Firm:
Contact:
Phone:

KNOWLEDGEABLE ISSUER CONTACT
Contact: Fred Riggleman
Position: General Manager
Phone: 304.369.2622

OTHER:
Agency: West Virginia Infrastructure & Jobs Development Council
Contact: Jim Ellers, P.E.
Position: Executive Director
Phone: 304.558.4607

DEPOSITS TO MBC AT CLOSE
By: ____ Wire ____ Check

| | | |
|---|---|---|
| ____ | Accrued Interest: | $ |
| ____ | Capitalized Interest: | $ |
| ____ | Reserve Account: | $ |
| ____ | Other: | $ |

REFUNDS & TRANSFERS BY MBC AT CLOSE
By: ____ Wire ____ Check ____ IGT

| | | |
|---|---|---|
| ____ | To Escrow Trustee | $ |
| ____ | To Issuer | $ |
| ____ | To Cons. Invest. Fun | $ |
| ____ | To Other: ____ | $ |

NOTES: Series 2010 A Bonds Reserve Acount to be funded by Letter of Credit

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED:
TRANSFERS REQUIRED:

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Boone County Bank, Madison, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution of Boone County Public Service District (the "Issuer") adopted by the Issuer on October 4, 2010, and a Supplemental Resolution adopted by the Issuer on October 4, 2010 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), dated October 14, 2010, issued in the original aggregate principal amount of $1,062,000 (the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 14th day of October, 2010.

BOONE COUNTY BANK

Charles J Warner Ex VP
Authorized Officer

09.29.10
091620.00002



CH5355696

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

ACCEPTANCE OF DUTIES AS REGISTRAR

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Boone County Public Service District Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), dated October 14, 2010, issued in the original aggregate principal amount of $1,062,000 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 14th day of October, 2010.

THE HUNTINGTON NATIONAL BANK

Assistant Vice President

09.29.10
091620.00002



CH5355700

BOONE COUNTY PUBLIC SERVICE DISTRICT

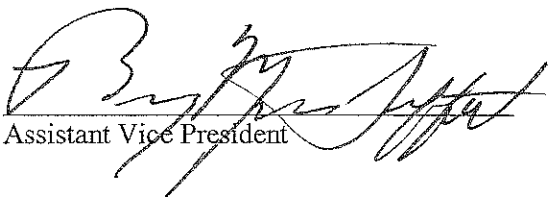
Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of Boone County Public Service District (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Water Revenue Bond, Series 2010 A (West Virginia Infrastructure Fund), of the Issuer, dated October 14, 2010, in the principal amount of $1,062,000, numbered AR-1, was registered as to principal only in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 14th day of October, 2010.

THE HUNTINGTON NATIONAL BANK



Assistant Vice President

09.29.10
091620.00002

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

# REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 14th day of October, 2010, by and between BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $1,062,000 Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), in fully registered form (the "Bonds"), pursuant to a Bond Resolution of the Issuer duly adopted October 4, 2010, and a Supplemental Resolution of the Issuer duly adopted October 4, 2010 (collectively, the "Bond Legislation");

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 Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

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

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

1. Upon the execution of this 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 Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds 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 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 the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation 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 Bond Legislation 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 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Boone County Public Service District
P.O. Box 287
Danville, West Virginia
Attention: Chairman

REGISTRAR: The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301
Attention: Corporate Trust Department

8. The Registrar shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Registrar shall carry out applicable requirements of 40 CRF part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Registrar to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or other legal available remedies.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

BOONE COUNTY PUBLIC
SERVICE DISTRICT

Chairman

THE HUNTINGTON NATIONAL BANK

Authorized Officer

09.29.10
091620.00002

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

**Private Financial Group**
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date October 14, 2010

**Boone County Public Service District**
**Account Number 6089001809**

Boone County Public Service District
Water Revenue Bonds, Series 2010 A
C/o John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

**********

FEE CALCULATION FOR October, 2010

**********

| | |
|---|---|
| TOTAL AMOUNT | $ 500.00 |
| **TOTAL DUE** | **$ 500.00** |

**MAIL CHECK TO:**
**THE HUNTINGTON NATIONAL BANK**
**ATTN: BARRY GRIFFITH – WE3013**
**PO BOX 633**
**CHARLESTON, WV 25322-0633**

**PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT**

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304) 348-5035

THIS AGREEMENT is made as of this 28th day of October 1996, by and between WEST VIRGINIA-AMERICAN WATER COMPANY, a West Virginia corporation ("Company"), and the DANVILLE PUBLIC SERVICE DISTRICT ("DPSD"), a public service district created under the provisions of W. Va. Code § 16-13A-1.

WITNESSETH:

WHEREAS, Company, by Agreements of Purchase previously submitted to the Public Service Commission of West Virginia ("Public Service Commission") has requested approval to acquire the water utility assets of the Coal River Public Service District ("CRPSD"), the Van Public Service District ("VPSD"), and Spruce Fork Public Service District ("SFPSD"); and

WHEREAS, Company currently provides water to customers of the DPSD pursuant to various Operation and Maintenance Agreements approved by the Public Service Commission (CRPSD, VPSD, SFPSD and DPSD being hereinafter collectively referred to as "Districts"); and

WHEREAS, Districts believe that the responsibilities of the Districts include assisting in bringing quality potable water at reasonable rates to the citizens of Boone County and in developing and advancing the business prosperity, health and economic welfare of the citizens of Boone County; and

WHEREAS, in furtherance of those responsibilities, DPSD, as agent for the Districts under the Intergovernmental Agreement dated October __, 1996, discussed in the Joint Application to the Commission hereinafter referred to, and Company propose to file a Joint Application ("Joint Application") to the Commission advancing a Boone County Regional Water Supply Plan ("Plan") which seeks approval for the construction of a water

project involving transmission and distribution mains and related pumping and storage facilities (the "Project") to be constructed as public/private partnership and designed to bring water service from the Company's Kanawha Valley Treatment Plant to various areas of Boone County; and

WHEREAS, under the transactions described in the Joint Application and in this Agreement, the DPSD will change its name to the Boone County Public Service District and assume certain responsibilities on behalf of the Districts other than the DPSD under the Intergovernmental Agreement also discussed in the Joint Application for the Project; and

WHEREAS, the DPSD believes that in the fulfillment of its responsibilities it should finance or assist in the financing of the cost of, or undertake the construction of, certain portions of the Project in order to extend water service to currently unserved or under served areas of the County and to interconnect the existing facilities of the Districts with the Company's Kanawha and Madison distribution systems; and

WHEREAS, Company intends to purchase the water utility assets of certain of the Districts and construct water transmission and distribution facilities as a part of the Project (such Company-purchased or Company-constructed facilities being hereinafter collectively referred to as the "Company Facilities"); and

WHEREAS, following completion of the acquisition or construction by the Company of the Company Facilities, the Company Facilities, exclusive of any facilities of the District improved through the use of employees of the County Commission of Boone County ("County Commission"), will be conveyed by Company to the County Commission pursuant to the Industrial Development Bond and Commercial Development Act W. Va.

Code §§13-2C-1, et seq. (the "Bond Act") in exchange for Industrial Development Bonds ("IDB Bonds") issued by the County Commission; and

WHEREAS, the Company Facilities will then be leased by County Commission to the Company under a Capital Lease ("Capital Lease") for a period of 40 years, in exchange for lease payments by Company sufficient to pay debt service on the IDB Bonds; and

WHEREAS, DPSD proposes to design, construct, and own certain other water distribution facilities ("DPSD Facilities") more fully described in Section IA of this Agreement, such areas to be served and the DPSD Facilities to be built being identified on maps incorporated by reference as Exhibit A from the Joint Application; and

WHEREAS, upon completion of the construction of the DPSD Facilities by DPSD, Company is prepared to assume the responsibility for operating and maintaining the DPSD Facilities and pay the DPSD a use fee ("Use Fee") for the right to use the DPSD Facilities; and

WHEREAS, DPSD has determined that Company is the best available source of potable water for serving the customers to be served by the DPSD Facilities and has the experience and ability to manage and operate the DPSD Facilities;

WHEREAS, Company has sufficient treatment capacity at its Kanawha Valley Treatment Plant in Charleston, West Virginia, to supply the current and estimated future needs of the Company's customers and the customers to be served by the Company Facilities and the DPSD Facilities; and

WHEREAS, DPSD believes it is in the best interests of the customers of the DPSD for Company to operate, maintain, repair, and replace the DPSD Facilities after their construction by the DPSD.

NOW, THEREFORE, for and in consideration of the premises, which are hereby made an integral part of this Agreement and which are not to be construed as mere recitals, the covenants and agreements contained herein, and other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, the Company and DPSD agree as follows:

I. CONSTRUCTION OF FACILITIES.

After the conditions precedent described in Section XIV have been satisfied, the DPSD and Company shall proceed promptly and diligently to construct the following facilities:

A. DPSD Facilities.

DPSD shall, at its sole cost and expense, purchase, install and own the DPSD Facilities listed on Exhibit B. The DPSD Facilities to be constructed by DPSD will be constructed at a total estimated cost of approximately $11.731 million.

B. Company Facilities to be Acquired or Constructed.

Company shall purchase from the Districts or design, purchase, install, and own the Company Facilities listed on Exhibit B, including service lines and meter settings for those customers to be served from the DPSD Facilities. The DPSD Facilities and the Company Facilities to be constructed by the Company will be located on or attached to the Company's system at the locations indicated on the more detailed maps of the Company

Facilities and DPSD Facilities incorporated by reference as Exhibit A to this Agreement. The Company Facilities to be constructed or acquired by Company will be purchased or constructed at a total estimated cost of approximately $15.969 million, an amount calculated based on (i) the estimated number of customers to be served by the Company Facilities or the DPSD Facilities (ii) the improvements and betterments which will result to the Company's system and (iii) the elimination of a treatment plant and raw water supply upgrade at the Company's Madison Treatment Plant that will otherwise be required if the Project is not constructed.

II. SUPPLY OF WATER TO CUSTOMERS SERVED BY THE PROJECT.

A. Quality and Quantity of Water. Upon completion of construction of the Project contemplated under this Agreement, Company agrees to provide to all customers served by the Project, subject to the terms, conditions, undertakings, agreements, and limitations provided in this Agreement, the total water requirements of those customers. The water delivered to customers shall be of the same quality as that supplied to the customers in the Company's Kanawha Valley District. Customers served from the Company's existing Madison System or from the Company Facilities purchased or constructed by Company will be charged the rates and charges of the Company from time to time established for the Company pursuant to Chapter 24 of the West Virginia Code, as amended. Company shall be paid for the water supplied to the DPSD customers in the manner set forth in Section VII of this Agreement.

B. Monitoring of Water Quality. Company shall monitor the water quality and be responsible for compliance with all state and federal standards for furnishing water to the public.

C. Possible Water Shortage. In the event of an extended shortage of water, or if the supply of water from Company is otherwise diminished or impaired, the supply of water to the Customers shall be reduced or diminished in approximately the same proportion as the supply of the water to customers of Company's Kanawha Valley District is reduced or diminished. Any notification given to Company's Kanawha Valley District customers of any anticipated shortage of water shall also be given to customers of the Company and the DPSD.

III. TERM OF THIS AGREEMENT.

The term of this Agreement shall extend for forty (40) years from the date hereof and thereafter may continue in effect from year to year after the 40-year term of the Agreement by mutual consent of the parties; provided, however, that the Company and DPSD may agree mutually to terminate this Agreement at any time after (i) the payment to the owners of the IDB Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due on the IDB Bonds and (ii) the payment by the DPSD of any loans or borrowings from the Infrastructure Council or any other lender funding the construction of the DPSD Facilities.

IV. PLANS AND SPECIFICATIONS FOR DPSD FACILITIES.

A. Approval of Plans and Specifications. Because of the importance of a properly designed and constructed system and because of the Company's obligation, at its

expense under this Agreement, to operate, maintain and repair the DPSD Facilities, DPSD has agreed to retain the services of Company engineers or an engineering firm retained by the Company, and Company has agreed to provide the engineering services for the Project, including preparing the necessary plans and specifications and preparing estimates of the cost of construction of DPSD Facilities. The cost of such engineering services shall be paid by the Company and considered as a portion of the cost of the Project by the Company as shown on Exhibit B to this Agreement.

B. Company as Contractor. If Company also acts as contractor for the DPSD, Company shall be responsible for insuring that the construction of the DPSD Facilities is conducted in accordance with the Plans and Specifications.

V. OPERATION AND MAINTENANCE OF DPSD FACILITIES BY COMPANY.

A. Company to Operate. Following the construction of the DPSD Facilities, Company hereby agrees, at its cost, except as otherwise noted in this Agreement, to operate, maintain, repair, and replace (i) DPSD Facilities described in Section IA of this Agreement and (ii) all water line additions and extensions thereto made with the written approval of Company and DPSD.

B. Replacement of Unit of Property. In the event Company, under the terms of this Agreement, is required to install, relocate or replace any "unit of property" within the DPSD Facilities as defined in the Uniform System of Accounts of the National Association of Regulatory Utility Commissioners ("NARUC"), the Company shall make such installation, relocation or replacement at its cost; provided, however, that in every such instance the unit of property shall be, and remain, the property of Company (unless

purchased by DPSD from Company after termination of this Agreement as provided in Section X hereof) and shall be properly includable in the depreciable utility plant of the Company in calculating its cost of service and resulting rates.

C. Ownership of Units of Property. The Company and DPSD agree that, in those instances in which the Company installs, replaces or relocates any unit of property on the DPSD distribution system pursuant to the provisions of subsection B of this Section V, the DPSD shall, simultaneously therewith, grant to Company a right to use all of the related rights-of-way, easements, licenses or other property interests necessary for Company to have and own such unit of property in the location and manner in which it is installed, replaced or relocated on the DPSD system.

VI. PAYMENT BY COMPANY FOR USE OF DPSD FACILITIES.

In exchange for the benefits of having the Company's Kanawha Valley Treatment Plant connected to the Company's Madison distribution system and to the DPSD customers through the DPSD Facilities, Company will pay DPSD $216,363 per year but only until the debt of the DPSD approved by the Infrastructure Council has been paid in full. This $216,363 payment shall be paid directly to the account of DPSD, and will be paid on a monthly basis at the time of the other payments provided in paragraph VII hereof.

VII. READING METERS, BILLING OF CUSTOMERS, AND PAYMENT TO DPSD.

A. Meter Reading. All customers served directly from the DPSD Facilities under this Agreement shall be the customers of DPSD. Company shall read all meters of the customers of DPSD and render bills to those customers, as agent for and on behalf of DPSD, in a manner consistent with the meter reading and billing practices of Company employed

in billing its own customers, such bills to be rendered and collected by Company on behalf of DPSD and to be computed based on the usage of each DPSD customer at the rates of DPSD from time to time established pursuant to Chapter 24 of the West Virginia Code, as amended. It is the intention of the Company and the DPSD that the rates of DPSD mirror the rates of the Company, and Company agrees to prepare and file a tariff for the DPSD to implement any such tariff changes for the DPSD at the cost of the Company.

B. Bills to DPSD Customers. The bills delivered to each customer on behalf of DPSD shall reflect the amount due for the water used (such amount to be determined by applying the rates of DPSD to the consumption of water by customers as determined by monthly or estimated meter readings). The bills delivered to the customers will be delivered by, and payable to, Company as agent for DPSD.

C. Payment to Company. Company, in consideration of the respective rights, duties, obligations, agreements, and undertakings of the parties under this Agreement, shall be entitled to receive an amount for water service rendered to the DPSD customers equal to the consumption of each such DPSD customer at Company rates from time to time established pursuant to Chapter 24 of the West Virginia Code, as amended. Company shall prepare and deliver a monthly statement to DPSD which shall reflect the total amount collected by Company as agent for DPSD and the total amount retained by Company for the water service provided to Customers at the respective rates of DPSD and Company. A DPSD customer shall be charged a municipal B & O surcharge on his usage only if that customer resides within a municipality which imposes such a surcharge. In addition, the monthly statement to be provided to DPSD by Company will also include the costs of any

additions or extensions, and related refunds, made at the cost of the DPSD under Section VIII, and the cost of any fire hydrants under Section XII installed at the cost of the DPSD.

D. Payment for DPSD Expenses. In addition to such other obligations, duties and responsibilities set forth in this Agreement, Company also agrees to pay directly to vendors the reasonable costs, related to performing under this Agreement, of the following four items on behalf of DPSD, up to a maximum aggregate amount for all four items of Four Thousand Dollars ($4,000) in each calendar year during the term hereof, upon the receipt of an invoice for such costs from the vendor, which has been approved by DPSD for payment and forwarded by DPSD to Company:

1. Legal and Accounting Expenses
2. Liability Insurance and Bonds
3. Regulatory Commission Fees
4. Miscellaneous Supplies.

In the event that either Company or DPSD determines that the maximum aggregate amount of $4,000 is not adequate or sufficient to pay the reasonable costs of the above-mentioned four items, then either party may petition the Utilities Division of the Public Service Commission of West Virginia to audit and review the costs incurred by DPSD for said items and to fix the maximum aggregate amount for said items which Company will pay pursuant to this subsection D; provided, however, that Company shall have the right to contest the amount so fixed by petitioning the Commission to review the determination of the Utilities Division.

E. As a part of the costs and expenses described in subsection D of this Section VII, DPSD agrees to have its accountants review, at least annually, at the expense

of DPSD, the system of accounts maintained by Company for DPSD and report the results of the review to DPSD and Company.

VIII. FUTURE ADDITIONS TO AND FUTURE EXTENSION OF DPSD FACILITIES.

A. Adequacy of Facilities for Future Water Use. Company and DPSD are aware that there may be future additions and extensions to serve customers from the DPSD Facilities. In addition to the other requirements set forth in this Agreement, DPSD and Company hereby specifically agree that such additions and extensions will be made only if, in the opinion of Company, Company's Kanawha Valley Treatment Plant has sufficient treatment capacity and distribution and pumping facilities, including transmission and distribution mains, adequate to serve DPSD's customers and if Company believes it otherwise economically feasible to meet the total then present and anticipated needs of both the DPSD's customers, the customers served from the Company Facilities acquired by Company from the Districts and the other customers of Company's Kanawha Valley and Madison Districts.

B. Future Additions. All future additions to DPSD Facilities constructed by DPSD shall be subject to this Agreement; provided, however, that future additions to the system must be approved by Company and DPSD.

C. Future Extensions. Customer extensions from DPSD Facilities will be installed by Company. When DPSD receives a request for a customer extension, DPSD shall notify Company in writing within fifteen days of its receipt of said request. Company shall contract on its own behalf with the customer requesting the extension and make the installation pursuant to the Water Rules of the Public Service Commission. All customers

attaching to the customer extension shall be considered customers of Company for billing purposes at the rates of Company. The customer extension shall be, without further cost or expense of any kind, the property of Company.

D. Refunds. Refunds made pursuant to the Water Rules of the Commission to customers contracting with Company pursuant to subparagraph VIIIC shall be the sole responsibility of Company, and the cost of such extensions, to the extent refunded or reimbursed to customers pursuant to the Public Service Commission's Water Rules, shall be properly includable in Company's depreciable utility plant in calculating Company's cost of service and resulting rates.

IX. INSTALLATION OF DOMESTIC SERVICES.

After the construction of the DPSD Facilities provided for in this Agreement has been completed, Company shall install, in accordance with the Water Rules of the Public Service Commission, domestic service lines, including the tap on DPSD Facilities and the service line from DPSD Facilities to the established curb line or within the public right-of-way nearest the main. This installation shall include the meter setting. All such service lines from the DPSD Facilities to the DPSD customer's property line, meter settings, and taps shall be constructed and installed by Company at its expense and shall be the property of Company. Company shall install all meters at its cost, shall own the meters, and shall assume the obligation to repair, maintain, and replace the meters.

X. TRANSFER TO COMPANY UPON TERMINATION OF THE AGREEMENT; EXTENSION OF AGREEMENT.

A. Option to Transfer or Retain. Upon the termination of this Agreement, which termination shall not occur until defeasance or payment of any Infrastructure Loan,

DPSD shall pay Company for all water delivered to DPSD customers through the termination date of this Agreement in accordance with the provisions of Section VII of this Agreement, and, at its option, DPSD may either (i) convey all of the DPSD Facilities to Company and Company agrees to accept ownership and the responsibility to operate, maintain, repair, and replace the DPSD Facilities or (ii) retain the DPSD Facilities and pay Company as provided in subsection B of this Section X.

B. If DPSD Retains. Upon termination of the Agreement and if DPSD desires to retain the DPSD Facilities, DPSD agrees that it will purchase from Company at the depreciated original cost all water meters installed on DPSD's distribution system at the time of such termination, all units of property installed, replaced or relocated by Company on the DPSD system under Section V of this Agreement and all service lines from the DPSD Facilities to the DPSD customers' property line, meter settings, and taps installed at the cost of the Company and reflected on the books of the Company at the time of the termination of the Agreement. Further, DPSD agrees that, if it elects to retain the DPSD Facilities upon termination of the Agreement, DPSD will reimburse Company for any tax expense incurred by Company as a result of this Agreement, plus interest as hereinafter provided, reduced by the tax refunds, if any, which Company may obtain as a result of the termination of this Agreement.

C. Method and Calculation of Payment to Company. Upon written notice of termination of the Agreement and the Lease, the Company shall, within thirty (30) days of such written notice of termination, provide to DPSD (i) the estimate of the total of all payments for water provided by Company, (ii) the cost of all items described in subparagraph

B of this Section X, and (iii) the total accrued depreciation applicable to any of such items. If DPSD elects to retain DPSD Facilities, DPSD agrees that it will pay to Company the total amount of the items described in subsection B over a three-year period with such payments to be made in thirty-six (36) equal monthly payments of principal, plus accrued interest at the "Prime Rate," as defined below, commencing forty-five (45) days after termination of the Agreement. The Prime Rate shall be the prime rate as shown in The Wall Street Journal being defined therein as the "base rate on corporate loans at large U.S. money center commercial banks" and reported as the "PRIME RATE" under the heading "Money Rates," as those terms shall be from time to time changed. The Prime Rate shall change not more often than the first day of each calendar quarter, and for each calendar quarter it shall be determined on the last day of the preceding calendar quarter on which The Wall Street Journal is published with the aforesaid prime rate quotation. In the event that The Wall Street Journal ceases to publish such rates, the Prime Rate shall be the prime rate established by One Valley Bank, National Association, of Charleston, West Virginia, from time to time.

D. Extension of Agreement. Nothing in this Agreement shall be deemed to preclude the parties from extending the Agreement for an additional period to be mutually agreed upon by the parties.

XI. INSTALLATION OF PRIVATE FIRE PROTECTION SERVICES.

After the proposed construction provided for in this Agreement has been completed, additional fire services, approved by DPSD, may be installed by Company from the DPSD Facilities, but only in accordance with the Water Rules of the Commission. Fire service will be installed by Company at the expense of the applicant and will be billed by

Company to the applicant and paid by the applicant directly to Company at a rate equal to the then approved Company's private protection rate.

XII. INSTALLATION OF FIRE HYDRANTS.

After the original construction provided for in this Agreement has been completed, public fire protection facilities approved by County and DPSD may be installed on DPSD Facilities covered by this Agreement at the request of an appropriate governmental unit, and installation shall be made pursuant to the Water Rules of the Public Service Commission, provided that all such fire hydrants shall have a flow capability of at least 500 GPM at 20 psi residential pressure for a sustained period of time.

XIII. SERVICE AREAS.

It is expressly understood and agreed by Company and DPSD:

A. Company Right to Serve. Company shall be permitted to install and maintain such Company lines, pumps, tanks, or other facilities within or adjoining the service areas of the DPSD as are necessary to enjoy and fulfill its rights and obligations under this Agreement, subject to the terms and conditions set forth in this Agreement.

B. Company Customers. Except as otherwise provided in this Agreement, all persons residing outside of DPSD's water service area, as defined above, and served, either at present or in the future, by Company shall be considered customers of Company.

C. Use of DPSD Facilities After Termination. Company shall have the right, even after termination of this Agreement, to transfer water through DPSD Facilities, and all future additions and future extensions thereto, and to serve customers who may be

connected, directly or indirectly, to Company water mains, whether inside or outside DPSD's service area, provided there is no additional expense to DPSD.

XIV. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT.

The Company and DPSD understand and agree that this Agreement, and the obligations of each of them hereunder, are expressly conditioned upon the following, each of which is a condition precedent to the validity and enforceability of this Agreement.

A. Funding. DPSD shall have received a firm commitment for the necessary funding that may be required to construct the DPSD Facilities under the terms of this Agreement; provided, however, that in the event adequate funding is not available for such purposes, the parties may agree to a curtailment or modification of the scope of the DPSD Facilities or explore other funding options, but in no event shall DPSD be obligated to expend funds for construction of the DPSD Facilities in excess of the funding available to it for such purposes.

B. Rates. The Public Service Commission shall have approved the rates requested by DPSD and Company in the Joint Petition, or any supplements thereto, filed with the Public Service Commission seeking approval of this Agreement and any of the related transactions.

C. Requisite Permits. DPSD shall have acquired all necessary permits from all applicable state and federal agencies and shall provide evidence to Company, satisfactory to counsel for Company, that it has all of the necessary rights-of-way, easements, licenses or permits necessary for the installation of the DPSD Facilities; provided, however, that in the event that it is later discovered that DPSD does not have a right-of-way or

easement for a portion of the DPSD Facilities, this condition precedent shall be deemed satisfied if the DPSD acquires such right-of-way or easement, and the related right of entry, by eminent domain at no cost to Company.

D. Approval of Public Service Commission. The Public Service Commission shall have approved this Agreement, the Capital Lease, the Agreements of Purchase of the Districts and all of their terms, conditions, undertakings, agreements, and limitations. Specifically, and without in any way limiting the generality of this condition, the Order approving this Agreement, the Capital Lease, the Agreements of Purchase with the Districts and the transactions contemplated thereby shall:

(1) Authorize the inclusion in depreciable utility plant of the Company any amounts expended by Company for the cost of installing the Company Facilities and of installing, replacing or relocating any water lines or facilities on the DPSD system which are defined as a "unit of property," in the NARUC Uniform System of Accounts and which are relocated or replaced by Company at its cost pursuant to Section V of this Agreement and the cost to Company to install service lines, meter settings, and taps on the DPSD Facilities pursuant to Section IX;

(2) Authorize the Company to include in depreciable utility plant an amount equal to the tax expense, if any, associated with the obligations assumed by Company under the Agreement to the extent that the construction of the DPSD Facilities and other facilities undertaken by the DPSD, or the undertaking by Company to operate, maintain, repair or replace the DPSD Facilities under this Agreement, causes the cost of such DPSD

construction, or any part thereof, to constitute taxable income or otherwise to generate tax expense for Company;

(3) Authorize the implementation of the Step Rate Increases requested in the Joint Application;

(4) Authorize the payment of the Use Fee by the Company to DPSD and the recovery of the Use Fee in the Company's cost of service calculation; and

(5) Authorize the merger, consolidation, or adjustment of the boundaries of the VPSD, CRPSD and SFPSD with and into the DPSD and the adjustment of the boundaries and name of the DPSD.

F. No Adverse Ruling. The Commission shall not have attached to its Order any terms, conditions or limitations which shall adversely affect this Agreement, the Agreements of Purchase, the Lease or the economic feasibility of the Project between the parties insofar as requiring any of the parties to take any action or refrain from taking any action which, in the opinion of their respective counsel, might require them, or any of them, to breach any of their obligations under any Mortgage Indenture, as supplemented, or any other agreement to which any of them might be a party.

XV. REPRESENTATIONS AND WARRANTIES.

A. DPSD Representations and Warranties. DPSD represents and warrants to Company as follows:

(1) The execution, delivery, and performance of this Agreement by DPSD have been duly authorized, and this Agreement constitutes a valid and binding obligation of DPSD enforceable in accordance with its terms; and

(2) The execution and performance of this Agreement in accordance with its terms by DPSD will not violate any provisions of law, violate the terms or conditions of the Bonds or the Trust Indenture describing the various funds and the security for the Bonds, or violate any other instruments relating to the construction of the DPSD Facilities.

B. Company Representations and Warranties. Company represents and warrants to DPSD as follows:

(1) The execution, delivery, and performance of this Agreement by Company have been duly authorized, and this Agreement constitutes a valid and binding obligation of Company enforceable in accordance with its terms; and

(2) The execution and performance of this Agreement in accordance with its terms by Company will not violate any provisions of Company's indentures.

XVI. ASSIGNABILITY.

This Agreement shall be binding upon the successors and assigns of the respective parties hereto.

XVII. NOTICE.

Any notice, demand or request given hereunder shall be deemed sufficient if in writing and sent by certified mail, postal charges prepaid, to West Virginia-American Water Company, Attention: President, P. O. Box 1906, Charleston, West Virginia 25327; and to Danville Public Service District, P. O. Box 287, Danville, West Virginia 25053, or to such address as the parties shall indicate by written notice to the other party.

XVIII. CAPTIONS.

The captions preceding the text of the sections of this Agreement are inserted solely for convenience and reference and shall not be used to construe, interpret or affect any provision of this Agreement.

IN WITNESS WHEREOF, West Virginia-American Water Company, a corporation, and Danville Public Service District, a public service district, have caused this Agreement to be signed, by their proper officers thereunto duly authorized, all as of the day and year first above written.

WEST VIRGINIA-AMERICAN WATER COMPANY

Witness:

By _____
Its Vice President

DANVILLE PUBLIC SERVICE DISTRICT

Witness:

By _____
Its President

CHASFS3:13117

STATE OF WEST VIRGINIA

COUNTY OF ~~KANAWHA~~ BOONE, to-wit:

The foregoing instrument was acknowledged before me this 28th day of October, 1996, by Michael A. Miller, Vice President of West Virginia-American Water Company, a West Virginia corporation, on behalf of the corporation.

My commission expires May 5, 2000.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
CARMA B. MAHON
85 LEFTWITCH AVENUE
MADISON, WV 25130
My Commission Expires May 5, 2000

Carma B. Mahon
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF BOONE, to-wit:

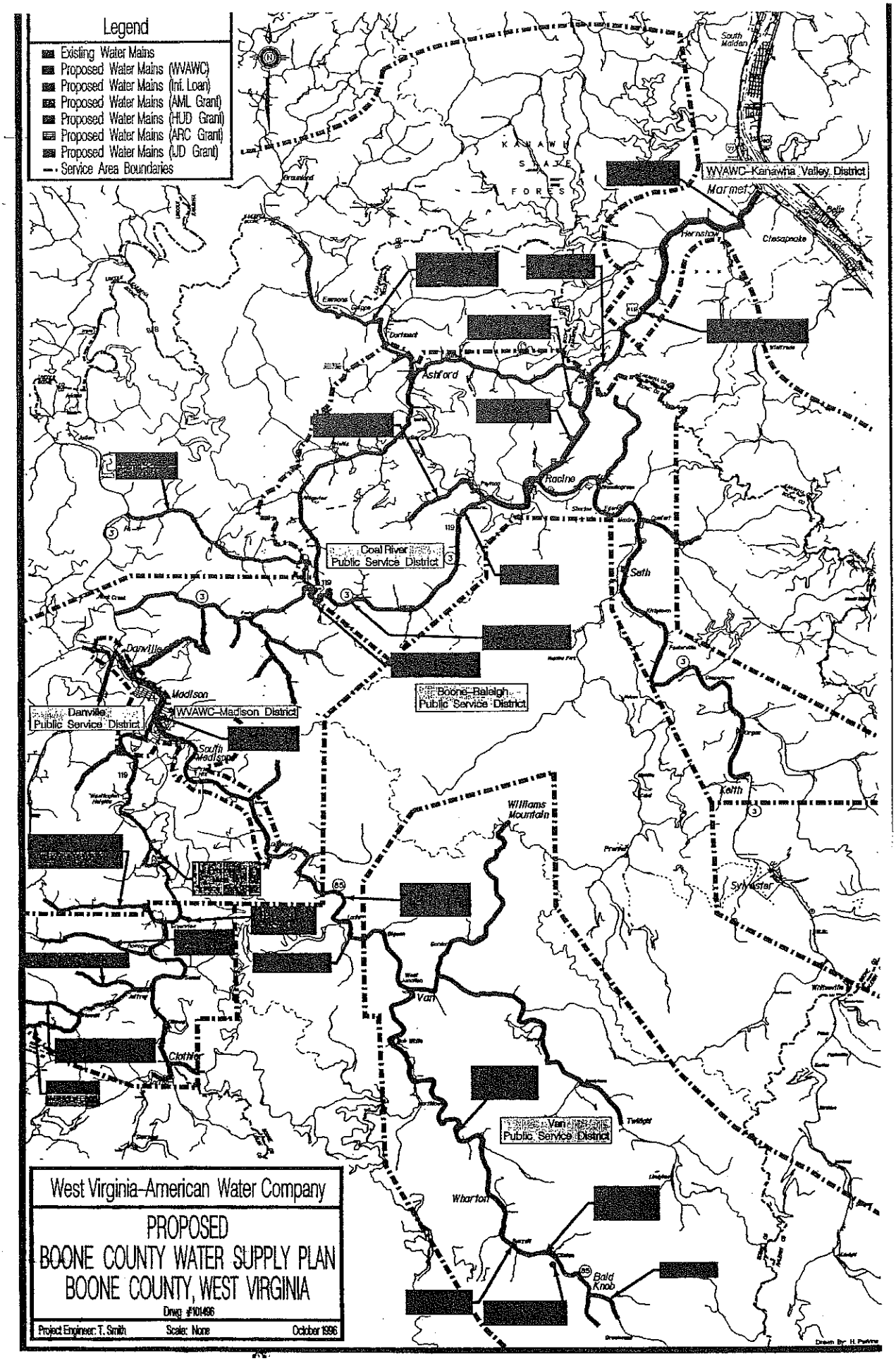
The foregoing instrument was acknowledged before me this 28th day of October, 1996, by Frank Rowley, Chairman of the Danville Public Service District, a political subdivision of the State of West Virginia, on behalf of the Commission.

My commission expires May 5, 2000.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
CARMA B. MAHON
85 LEFTWITCH AVENUE
MADISON, WV 25130
My Commission Expires May 5, 2000

Carma B. Mahon
Notary Public

CHASFS3:13147


Legend
Existing Water Mains
Proposed Water Mains (WVAWC)
Proposed Water Mains (Init. Loan)
Proposed Water Mains (AML Grant)
Proposed Water Mains (HUD Grant)
Proposed Water Mains (ARC Grant)
Proposed Water Mains (JD Grant)
Service Area Boundaries
WVAWC-Kanawha Valley District
Coal River Public Service District
Boone-Raleigh Public Service District
Danville Public Service District
WVAWC-Madison District
Van Public Service District
Marmet
Racine
Ashford
Seth
Madison
Danville
Williams Mountain
Van
Twilight
Wharton
Bald Knob
Sylvester
Keith
Clothier
West Virginia-American Water Company
PROPOSED
BOONE COUNTY WATER SUPPLY PLAN
BOONE COUNTY, WEST VIRGINIA
Dwg: #101496
Project Engineer: T. Smith
Scale: None
October 1996

| Kanawha Valley Treatment Plant Regionalization | | | | |
|---|---|---|---|---|
| | Description | Costs | Funding | Customers |
| Segment 4 | 210,000 gallon Clinton tank | 262,500 | WVAWC | N/A |
| | Van Booster Station | 80,000 | WVAWC | N/A |
| | Bim Booster Renovation | 60,000 | WVAWC | N/A |
| | Controls | 88,000 | WVAWC | N/A |
| | New meter settings | 280,800 | WVAWC | N/A |
| | Subtotal | 771,300 | WVAWC | N/A |
| | | | | |
| | Construction cost in Boone County Segments, 2, 3 and 4 | 7,027,850 | WVAWC | 4,437 |
| | | | | |
| | Segments 2, 3, and 4 Administration, legal, engineering, lands, rights of way | 1,812,120 | WVAWC | N/A |
| | Dartmont/Emmons extension Administration, Legal, Engineering, Lands, Rights-of-Way | 163,855 | WVAWC | N/A |
| | Camp Creek extension Administration, Legal, Engineering, Lands, Rights-of-Way | 220,390 | WVAWC | N/A |
| | Spruce Fork Supply extension Administration, Legal, Engineering, Lands, Rights-of-Way | 399,760 | WVAWC | N/A |
| | Greenview/Big Branch extension Administration, Legal, Engineering, Lands, Rights-of-Way | 115,100 | WVAWC | N/A |
| | James Branch and Greenwood extension Administration, Legal, Engineering, Lands, Rights-of-Way | 102,300 | WVAWC | N/A |
| | Meadow Fork/Dent Fork/Mikes Fork/Aleshire Branch extension Administration, Legal, Engineering, Lands, Rights-of-Way | 131,500 | WVAWC | N/A |
| | Jeffrey/Secoal/Obes Branch extension Administration, Legal, Engineering, Lands, Rights-of-Way | 81,650 | WVAWC | N/A |
| | Hewett Creek/Missouri Fork extension Administration, Legal, Engineering, Lands, Rights-of-Way | 244,600 | WVAWC | N/A |
| | Ramage/Six Mile extension Administration, Legal, Engineering, Lands, Rights-of-Way | 185,550 | WVAWC | N/A |

| Kanawha Valley Treatment Plant Regionalization | | | | |
|---|---|---|---|---|
| | Description | Costs | Funding | Customers |
| | | | | |
| | Subtotal Administration, Legal, Engineering, Lands, Rights-of-Way | 3,462,825 | WVAWC | N/A |
| | | | | |
| | Boone County debt | 1,093,700 | WVAWC | N/A |
| | Van debt | 315,700 | WVAWC | N/A |
| | Total Segments in Boone County | $11,900,075 | WVAWC | 4,437 |
| | | | | |
| | | | | |
| | | | | |
| Danville Public Service District | | | | |
| Segment 5 | 23,901' of 8" DIP - Dartmont/Emmons extension | 1,075,545 | Infrast. Loan | 59 |
| | | | | |
| | 30,158' of 8" DIP - Camp Creek extension | 1,357,110 | IJDG - 1,000,000<br>Infrast. Loan - 357,110 | 244 |
| | | | | |
| | 23,475' of 8" DIP - Supply Spruce Fork extension | 1,056,375 | AML Grant | 120 |
| | 19,623' of 12" DIP | 1,079,265 | AML Grant - 293,625<br>Infrast. Loan - 785,640 | 188 |
| | 200,000 gallon tank - Greenview | 214,000 | Infrast. Loan | N/A |
| | Controls | 35,665 | Infrast. Loan | N/A |
| | Subtotal | 2,385,305 | AML Grant - 1,350,000<br>Infrast. Loan - 1,041,305 | 308 |
| | | | | |
| | 15,750' of 8" DIP - Greenview/Big Branch extension | 708,750 | Infrast. Loan - 382,500<br>HUD - 326,250 | 140 |
| | | | | |
| | 14,000' of 8" DIP - James Branch and Greenwood extension | 630,000 | Infrast. Loan | 157 |
| | | | | |
| | 18,000' of 8" DIP - Meadow Fork/Dent Fork/Mikes Fork/Aleshire Branch extension | 810,000 | Infrast. Loan | 100 |
| | | | | |

| Kanawha Valley Treatment Plant Regionalization | | | | |
|---|---|---|---|---|
| | Description | Costs | Funding | Customers |
| | 10,750' of 8" DIP - Jeffrey/Secoal/Obes Branch extension | 483,750 | HUD | 250 |
| | | | | |
| | 32,000' of 8" DIP - Hewett Creek/Missouri Fork extension | 1,440,000 | HUD - 440,000<br>ARC - 1,000,000 | 170 |
| | | | | |
| | 25,000' of 8" DIP - Ramage/Six Mile extension | 1,125,000 | Infrast. Loan | 180 |
| | | | | |
| | Peytona extension | 251,250 | Infrast. Loan | 591 |
| | | | | |
| | 48,793' of 8" DIP main from Madison to Van and from Barrett to Clinton | 1,463,790 | Infrast. Loan | 1,375 |
| | | | | |
| | Subtotal of Estimated Construction Cost by Danville Public Service District | 11,730,500 | DPSD | 3,574 |
| | | | | |
| | | | | |
| | Total Estimated Project Cost | 27,700,000 | WVAWC/DPSD | 8,011 |
| | | | | |
| **Project Funding Summary** | | | | |
| | Infrastructure Loan | $ 7,130,500 | | |
| | Infrastructure Grant | 1,000,000 | | |
| | AML Grant | 1,350,000 | | |
| | ARC Grant | 1,000,000 | | |
| | HUD Grant | 1,250,000 | | |
| | WVAWC | 15,969,500 | | |
| | | $27,700,000 | | |

571191 571451 396940

Attachment B

| Kanawha Valley Treatment Plant Regionalization | | | | |
|---|---|---|---|---|
| | Description | Costs | Funding | Customers |
| | Kanawha County | | | |
| Segment 1 | 29,441' of 20" main from Marmet to Lens Creek | 1,913,665 | WVAWC | N/A |
| | 10,800' of 16" main from lens Creek past Short Creek Tank | 648,000 | WVAWC | N/A |
| | Lens Creek Booster Station | 800,000 | WVAWC | N/A |
| | Controls | 266,000 | WVAWC | N/A |
| | | | | |
| | Construction cost | $3,627,665 | WVAWC | N/A |
| | | | | |
| | Administration, legal, engineering, lands, rights of way | $441,760 | WVAWC | N/A |
| | Total segment in Kanawha County | 4,069,425 | WVAWC | N/A |
| | | | | |
| | | | | |
| | | | | |
| | Boone County | | | |
| Segment 2 | 300,000 gallon tank - Lens Creek | 350,000 | WVAWC | N/A |
| | 310,000 gallon tank - Drawdy Mtn. | 350,000 | WVAWC | N/A |
| | Controls | 128,200 | WVAWC | N/A |
| | 44,160' of 16" main to Drawdy Mtn. | 2,649,600 | WVAWC | 2,348 |
| | 520' of 8" PVC line | 13,000 | WVAWC | N/A |
| | 250' of 12" PVC line | 10,000 | WVAWC | N/A |
| | Drawdy Mountain booster station | 350,000 | WVAWC | N/A |
| | 5,500' extension to serve White Oak (Material only) | 93,000 | WVAWC | 31 |
| | New meter settings | 260,000 | WVAWC | N/A |
| | Subtotal | 4,203,800 | WVAWC | 2,379 |
| | | | | |
| Segment 3 | 24,510' of 12" main through Danville and Madison | 980,400 | WVAWC | 2,058 |
| | 550' of 8" PVC line | 13,750 | WVAWC | N/A |
| | Controls | 276,000 | WVAWC | N/A |
| | New meter settings | 782,600 | WVAWC | N/A |
| | Subtotal | 2,052,750 | WVAWC | 2,058 |
| | | | | |

THIS FIRST AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT (the "Amendment") is made as of this 04 day of August, 1999, by and between WEST VIRGINIA-AMERICAN WATER COMPANY, a West Virginia corporation (the "Company"), and BOONE COUNTY PUBLIC SERVICE DISTRICT ("BCPSD), a public service district created under the provisions of W. Va. Code § 16-13A-1, et seq.

WITNESSETH:

WHEREAS, the Company and BCPSD, as successor in interest by change of name to Danville Public Service District ("DPSD"), are parties to an Operation and Maintenance Agreement dated as of October 28, 1996 (the "1996 Agreement") under which the Company agreed to operate and maintain the water utility facilities of BCPSD for a term of forty years;

WHEREAS, the Company and BCPSD entered into the 1996 Agreement in furtherance of the Boone County Regional Water Supply Plan and sought approval of the Public Service Commission of West Virginia (the "Commission") for the construction of a county-wide water project designed to bring water service from the Company's Kanawha Valley Treatment Plant to various areas of Boone County, West Virginia (the "Project");

WHEREAS, the Commission approved the Project and the 1996 Agreement by Commission Order dated October 17, 1997 in West Virginia-American Water Company, PSC Case No. 96-1338-PWD-CN, and three other consolidated cases (the "October 1997 Order"), in which the Commission approved a Joint Stipulation and Agreement for Settlement between the Company, the County Commission of Boone County, DPSD, Spruce



34B

Fork Public Service District ("SFPSD"), Coal River Public Service District ("CRPSD"), Van Public Service District ("VPSD"), the Staff of the Public Service Commission and the Consumer Advocate Division of the Public Service Commission;

WHEREAS, at the time of the 1996 Agreement and the October 1997 Order, the Parties and the Commission contemplated that the Company would purchase all of the water utility assets, real, personal and mixed, of CRPSD and VPSD, and the October 1997 Order approved the Company's purchase of those assets;

WHEREAS, subsequent to the October 1997 Order, the United States Department of Agriculture, Rural Development and the Economic Development Administration of the United States Department of Commerce indicated that conveyance of property that may have been constructed by grants might require all or a portion of grants previously given to CRPSD and VPSD to be repaid if the Company acquired the water utility assets of the DPSD, CRPSD, or VPSD;

WHEREAS, in January 1999 the Company petitioned the Commission for approval to pay the water utility debt of CRPSD and VPSD, to treat the payment of that debt of CRPSD and VPSD as a regulatory asset, to transfer all of the water utility assets to DPSD (which would then become the BCPSD by change of name) and to permit the Company to operate, maintain, repair and replace all of the water utility assets, real, personal and mixed, of CRPSD and VPSD under the 1996 Agreement;

WHEREAS, the Commission approved the Company's requests by Commission Orders dated March 11, 1999 and May 3, 1999 in West Virginia-American Water Company, PSC Case No. 96-1338-PWD-CN;

WHEREAS, the territorial boundaries of CRPSD, VPSD and SFPSD for water service were consolidated with the boundaries of the DPSD and the water utility assets, real, personal and mixed, of CRPSD and VPSD, used and useful in providing water service to the CRPSD and VPSD customers were transferred to DPSD by operation of law on May 7, 1999 pursuant to Commission Orders dated June 18, 1998 and August 28, 1998 in Boone County Commission, PSC Case No. 98-0464-PWD-PC, and Resolutions and Orders of the County Commission of Boone County (the "County Commission") dated March 9, 1998, April 6, 1998 and April 19, 1999, and all real property and utility assets related to the water operations of CRPSD and VPSD were also conveyed to DPSD by Confirmatory Deeds dated May 7, 1999 and recorded in the Office of the Clerk of the County Commission;

WHEREAS, on May 7, 1999, BCPSD was created by merger of VPSD, CRPSD and SFPSD into DPSD, with DPSD surviving, and by change of name of DPSD to BCPSD, and all of the water utility assets of BCPSD, including the water utility assets formerly held by CRPSD and VPSD, became subject to the 1996 Agreement

WHEREAS, BCPSD and Company desire to clarify and confirm that the 1996 Agreement is intended to include the Company's operation, maintenance, repair and replacement of all of the existing water utility facilities of BCPSD, including the assets of CRPSD and VPSD subsequently transferred to BCPSD and including the vehicles and

equipment originally contemplated to be conveyed to the Company in the Purchase Agreements in West Virginia-American Water Company, PSC Case No. 96-0218-W-PWD-PC (CRPSD) and West Virginia-American Water Company, PSC Case No. 96-0260-W-PWD-PC (VPSD);

WHEREAS, the Parties further desire to clarify, for their benefit and the benefit of potential purchasers of BCPSD's revenue bonds, that the 1996 Agreement, as amended, supersedes all prior operation and maintenance agreements and interim operation and maintenance agreements between the Company and BCPSD's constituent public service districts and governs all rights and responsibilities of the Parties with respect to the Company's operation and maintenance of BCPSD's water utility assets;

NOW, THEREFORE, for and in consideration of the premises, which are hereby made an integral part of this Amendment and which are not to be construed as mere recitals, the covenants and agreements contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Company and BCPSD agree that the 1996 Agreement is amended to the extent indicated below:

I. BCPSD AS SUCCESSOR IN INTEREST TO DPSD: As contemplated by the 1996 Agreement, BCPSD is the successor in interest to DPSD following the merger of CRPSD and VPSD into DPSD and the change of name of DPSD to BCPSD and all references to "DPSD" in the 1996 Agreement, except where such references are clearly intended to refer to DPSD prior to the merger with CRPSD and VPSD, shall be read and understood as "BCPSD" and all references to "DPSD Facilities" shall be read and understood as "BCPSD Facilities."

II. DEFINITION OF DPSD FACILITIES: Except where the context of the 1996 Agreement clearly requires otherwise, the definition of "DPSD Facilities" in Section I.A of the 1996 Agreement and the obligations of the Company to operate, maintain, repair, and replace such DPSD Facilities shall relate to all property and utility assets, real, personal or mixed, owned by BCPSD and used or useful in BCPSD's water utility operations, including without limitation all real and personal property and water utility assets formerly owned by CRPSD and VPSD, except for (i) property as contemplated in the purchase agreements originally approved in the October 1997 Order, and (ii) the property used in the sewer operations of DPSD and VPSD and identified on the schedules attached hereto as Appendix A.

III. COMPANY'S USE OF FACILITIES: Section V.A of the 1996 Agreement shall be amended to read as follows:

"A. Company to Operate, Maintain, Repair and Replace. Following the formation of BCPSD, the Company hereby agrees, at its cost, except as otherwise noted in this Agreement, to operate, maintain, repair and replace (i) the DPSD Facilities described in Section I.A of this Agreement, (ii) all water line additions and extensions thereto made with the written approval of BCPSD, and (iii) all other property, real, personal, and mixed conveyed to BCPSD. This obligation shall include the obligation to keep any machinery and equipment owned by BCPSD properly insured and licensed at the expense of the Company."

IV. 1996 AGREEMENT SUPERSEDES OTHER AGREEMENTS: The 1996 Agreement supersedes all prior operation and maintenance agreements and interim

operation and maintenance agreements between the Company and BCPSD's constituent public service districts and governs all rights and responsibilities of the Parties with respect to the Company's operation and maintenance of BCPSD's water utility assets.

V. REMAINING PROVISIONS: In all other respects, the 1996 Agreement shall be and remain in full force and effect.

IN WITNESS WHEREOF, West Virginia-American Water Company and Boone County Public Service District have caused this Amendment to be signed, by their duly authorized officers, all as of the date first above written.

WEST VIRGINIA-AMERICAN WATER COMPANY

By _____
Its President

BOONE COUNTY PUBLIC SERVICE DISTRICT

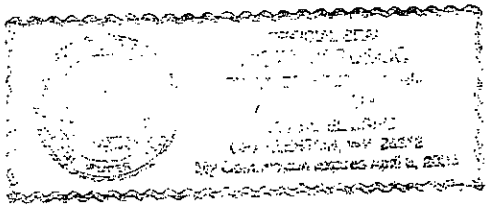
By _____
Its Chairman

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 11th day of August, 1999, by Chris E. Jarrett, President of West Virginia-American Water Company, a West Virginia corporation, on behalf of the corporation.

My commission expires April 6, 2004.



J G Judy
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, to-wit:

The foregoing instrument was acknowledged before me this [illegible] day of [illegible], 1999, by Lyle Roy, Chairman of Boone County Public Service District, on behalf of Boone County Public Service District.

My commission expires [illegible].

[illegible]
Notary Public

Coal River - Equipment:

1. F150 Ford 1996, WT 8,000
   VIN: 1FTBF14NA73874-5-99
   License Plate: B37-153
   Driver: David E. Holstein
   Driver's License #: E257023
   Sticker Exp. Date: May 1999

2. 152 Chevy 1500 1989, WT 8,000
   VIN: 1GCDK14H6KZZ4922
   License Plate: 31221
   Driver: Roger D. McIntyre
   Driver's License #: D060551
   Sticker Exp. Date: November 1998

3. 151 Chevy S-10 1997, WT 9,000
   VIN: 1GCCS1444TK232992
   License Plate: B37-947
   Driver: John Washburn
   Driver's License #: 1X28953
   Sticker Exp. Date: August 1998

4. 153 Chevy 2500 1989, WT 8,000
   VIN: 1GCGK24KXKE240534
   License Plate: B31-219
   Driver: All Employees
   Driver's License #: -----
   Sticker Exp. Date: January 1999

5. Various Office Equipment

**APPENDIX A**

Van - Equipment:

1. One 2" Homelite Diaphrain Pump, SN 92040203
2. One Stihl Cut Off Saw, TS40035Y8
3. One General Speed Rooter 90 Drain Cleanter, SN X 7R0594
4. One Tanaka Cut Off Saw, EHC 120
5. One 8 HP 4400 Watts Generator, HR0081-450
6. One Hudson Brothers Trailer, Model #HSE118 GVWR, 11,950 Pounds, VIN #10HHSE181V1000823

THIS SECOND AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT (the "Second Amendment") is made as of this __ day of October, 1999, by and between WEST VIRGINIA-AMERICAN WATER COMPANY, a West Virginia corporation (the "Company"), and BOONE COUNTY PUBLIC SERVICE DISTRICT ("BCPSD"), a public service district created under the provisions of W. Va. Code § 16-13A-1, et seq.

RECEIVED
1999 OCT 28 PM 2:35
VA STATE CORPORATION COMMISSION
PUBLIC SERVICE UTILITIES DIVISION

WITNESSETH:

WHEREAS, the Company and BCPSD, as successor in interest by change of name to Danville Public Service District ("DPSD"), are parties to an Operation and Maintenance Agreement dated as of October 28, 1996 (the "1996 Agreement") and a First Amendment to Operation and Maintenance Agreement dated as of August 10, 1999 ("First Amendment");

WHEREAS, since the Company and BCPSD entered into the 1996 Agreement, the scope and nature of the funding scenario for the Boone County Regional Water Supply Plan (the "Project") has changed, such that BCPSD now intends to borrow funds from two public sources: a forty-year loan from the West Virginia Infrastructure and Jobs Development Council at a zero percent interest rate (the "Infrastructure Council Loan") and a thirty-year loan from the West Virginia Drinking Water Treatment Revolving Fund at a zero percent interest rate and a one percent administrative fee (the "DWTRF Loan," and together with the Infrastructure Council Loan, the "Loans");

WHEREAS, the 1996 Agreement provided that the Company would pay monthly payments to BCPSD intended to permit BCPSD to make debt service payments on the

Infrastructure Council Loan, the only borrowing that the Parties anticipated BCPSD would make in connection with the Project at the time the 1996 Agreement was executed;

WHEREAS, in keeping with the spirit and intent of the 1996 Agreement and in order to satisfy certain funding agencies that BCPSD has a firm commitment from the Company to provide funds sufficient to make debt service on the Loans and pay the administrative fee for the DWTRF Loan, the Parties desire to further amend the 1996 Agreement;

NOW, THEREFORE, for and in consideration of the premises, which are hereby made an integral part of this Second Amendment and which are not to be construed as mere recitals, the covenants and agreements contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Company and BCPSD agree that the 1996 Agreement is amended to the extent indicated below:

I. COMPANY'S PAYMENT OF USE FEE TO BCPSD: Section VI of the 1996 Agreement shall be amended to read as follows:

"VI. PAYMENT BY COMPANY FOR USE OF BCPSD FACILITIES.

In exchange for the benefits of having the Company's Kanawha Valley Treatment Plant connected to the Company's Madison distribution system and to the BCPSD customers through the BCPSD Facilities, Company will make monthly payments directly to the account(s) of BCPSD in an aggregate amount that is sufficient to permit BCPSD to make the following payments in connection with a forty-year loan from the West Virginia Infrastructure and Jobs Development Council at a zero percent interest rate (the "Infrastructure Council

Loan") and a thirty-year loan from the West Virginia Drinking Water Treatment Revolving Fund at a zero percent interest rate and a one percent administrative fee (the "DWTRF Loan," and together with the Infrastructure Council Loan, the "Loans"):

A. An amount sufficient to permit BCPSD to make monthly payments of principal to the West Virginia Municipal Bond Commission ("MBC") in connection with the Infrastructure Council Loan; and

B. An amount sufficient to permit BCPSD to make monthly payments of principal and administrative fee to MBC in connection with the DWTRF Loan.

Notwithstanding the foregoing, the Company's obligation to make the portions of the aggregate monthly payment shall continue only for so long as BCPSD's repayment obligations on the respective Loans exist. The Parties further agree that if it is required to do so, the Company will make arrangements with the lending agencies to establish and maintain a credit facility in lieu of the normal reserve account requirements applicable to the two loans."

V. REMAINING PROVISIONS: In all other respects, the 1996 Agreement, as amended by the First Amendment, shall be and remain in full force and effect.

IN WITNESS WHEREOF, West Virginia-American Water Company and Boone County Public Service District have caused this Second Amendment to be signed, by their duly authorized officers, all as of the date first above written.

WEST VIRGINIA-AMERICAN WATER COMPANY

By _____
Its Vice-President and Treasurer

BOONE COUNTY PUBLIC SERVICE DISTRICT

By _____
Its Chairman

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 14th day of October, 1999, by Michael A. Miller, Vice-President and Treasurer of West Virginia-American Water Company, a West Virginia corporation, on behalf of the corporation.

My commission expires February 26, 2002.

Patti Hedrick
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF BOONE, to-wit:

The foregoing instrument was acknowledged before me this 18th day of October, 1999, by Lyle Roy, Chairman of Boone County Public Service District, on behalf of Boone County Public Service District.

My commission expires August 24, 2008.

Twila J. Adkins
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
TWILA J. ADKINS
P. O. BOX 303
MADISON, WV 25130-0303
My Commission Expires August 24, 2008

THIS **THIRD AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT** (the "Third Amendment") is made as of this 14th day of October, 2010, by and between **WEST VIRGINIA AMERICAN WATER COMPANY**, a West Virginia corporation (the "Company") and **BOONE COUNTY PUBLIC SERVICE DISTRICT** ("BCPSD"), a public service district created under the provisions of W.Va. Code §16-13A-1, et seq.

WITNESSETH:

WHEREAS, the Company and BCPSD, as successor in interest by change of name from Danville Public Service District ("DPSD"), are parties to an Operation and Maintenance Agreement dated as of October 28, 1996 (the "1996 Agreement"), a First Amendment to Operation and Maintenance Agreement dated as of August 10, 1999 ("First Amendment") and a Second Amendment to Operation and Maintenance Agreement dated as of October ___, 1999 ("Second Amendment").

WHEREAS, the 1996 Agreement provided that the Company would pay monthly payments to BCPSD intended to permit BCPSD to make debt service payments on the Infrastructure Council Loan, the only borrowing that the Parties anticipated BCPSD would make in connection with the Project at the time the 1996 Agreement was executed.

WHEREAS, since the Company and BCPSD entered into the 1996 Agreement, the scope and nature of the funding scenario for the Boone County Regional Water Supply Plan (the "Project") changed such that BCPSD borrowed funds to construct certain additional water line extensions to serve Boone County residents. The Second Amendment provided that the Company would pay monthly payments to BCPSD intended to permit BCPSD to make debt service payments on a forty-year loan from the West Virginia Infrastructure and Jobs Development Council at zero percent interest rate (the "1999 Infrastructure Council Loan") and a thirty-year loan from the West Virginia Drinking Water

Treatment Revolving Fund at zero percent interest rate and a one percent administrative fee (the "1999 DWTRF Loan").

WHEREAS, since the Company and BCPSD entered into the 1996 Agreement, the scope and nature of the funding scenario for the Boone County Regional Water Supply Plan (the "Project") has changed, such that BCPSD now intends to borrow funds for construction of a water line to serve customers along US 119-Corridor G from Turtle Creek to the Mud River in Boone County, WV. This construction will be funded in part by a forty-year loan from the West Virginia Water Development Authority on behalf of West Virginia Infrastructure and Jobs Development Council at a zero percent interest rate (the "2010 Infrastructure Council Loan").

WHEREAS, in keeping with the spirit and intent of the 1996 Agreement as amended and in order to satisfy certain funding agencies that BCPSD has a firm commitment from the Company to provide funds sufficient to make debt service on this new Loan, the parties desire to further amend the 1996 Agreement;

NOW THEREFORE, for and in consideration of the premises, which are herby made an integral part of this Third Amendment and which are not to be construed as mere recitals, the covenants and agreements contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Company and BCPSD agree that the 1996 Agreement is amended to the extent indicated below:

I. COMPANY'S PAYMENT OF USE FEE TO BCPSD: Section VI of the 1996 agreement shall be amended to read as follows:

"VI. PAYMENT BY COMPANY FOR USE OF BCPSD FACILITIES. In exchange for the benefits of having the Company's Kanawha Valley Treatment Plant connected to the Company's Madison distribution system and to the BCPSD customers through the BCPSD Facilities, Company will made monthly payments directly to the account(s) of BCPSD as follows:

A. An amount sufficient to permit BCPSD to make monthly payments of principal to the West Virginia Municipal Bond Commission ("MBC") in connection with the 1999 Infrastructure Council Loan.

B. An amount sufficient to permit BCPSD to make monthly payments of principal and an administrative fee to MBC in connection with the 1999 DWTRF Loan.

C. An amount sufficient to permit BCPSD to make monthly payments of principal to the MBC in connection with the 2010 Infrastructure Council Loan.

D. Provide a debt service reserve fund letter of credit equal to two (2) years of debt service on the 2010 bonds.

(Collectively referred to as the "Loans"). Notwithstanding the foregoing, the Company's obligation to make the portions of the aggregate monthly payment shall continue only for so long as BCPSD's repayment obligations on the respective Loans exist. The parties further agree that if it is required to do so, the Company will make arrangements with the lending agencies to establish and maintain a credit facility in lieu of the normal reserve account requirements applicable to the Loans.

Pursuant to the provisions of Section III of the Agreement, the term of the Agreement shall automatically be extended until the latter of (i) forty (40) years from the date of any amendment to the Agreement (unless otherwise specified in the amendment); or (ii) until the date of final maturity or payment of all debt obligations of BCPSD that are secured by the BCPSD Facilities (as defined therein) or by any amounts payable by the Company to BCPSD under the Agreement, or both. Consequently, upon execution of the Third Amendment, the term of the Agreement will be extended to coincide with the term of the Loans and the schedule of Use Fee payments dedicated to repayment of the Loans. However, the Company's obligations hereunder shall immediately cease in the event BCPSD elects to terminate the Agreement, as amended."

II. REMAINING PROVISIONS: In all other respects, the 1996 Agreement, as amended, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the West Virginia-American Water Company and Boone County Public Service District have caused this Third Amendment to be signed, by their duly authorized officers, all as of the day and year first written above.

WEST VIRGINIA-AMERICAN WATER COMPANY

By: _____

Its: Michael A. Miller
Vice-President/Treasurer

BOONE COUNTY PUBLIC SERVICE DISTRICT

By: _____

Its: Chairman

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this 14th day of October, 2010, by **MICHAEL A. MILLER**, Vice-President and Treasurer of West Virginia-American Water Company, a West Virginia corporation, on behalf of the corporation.

My commission expires: February 10, 2015.

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
J.G. Judy
2134 Zabel Drive
Charleston, WV 25312
My Commission Expires February 10, 2015

(NOTARY SEAL)

NOTARY PUBLIC

STATE OF WEST VIRGINIA,

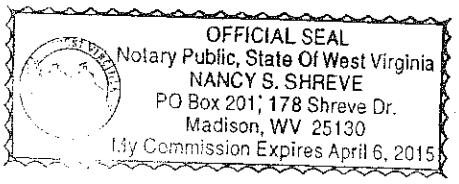
COUNTY OF BOONE, TO-WIT:

The foregoing instrument was acknowledged before me this 4 day of October, 2010 by Clarence Waller, Chairman of Boone County Public Service District, on behalf of Boone County Public Service District

My commission expires: 4-06-2015

Notary Public

(NOTARIAL SEAL)



JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010
OUR L/C NO.: TFTS-881433

TO:
WEST VIRGINIA MUNICIPAL BOND
COMMISSION, ATTN: SARA BOARDMAN
(REFER TO LC TEXT FOR FULL DETAILS)
1207 QUARRIER STREET, SUITE 401
CHARLESTON, WV 25301

APPLICANT:
AMERICAN WATER CAPITAL CORP.
ON BEHALF OF WEST VIRGINIA-AMERICAN
WATER COMPANY
1600 PENNSYLVANIA AVENUE
CHARLESTON, WV 25302-3932

WE HAVE ESTABLISHED OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR AS DETAILED HEREIN SUBJECT TO ISP98

| | |
|---|---|
| DOCUMENTARY CREDIT NUMBER: | TFTS-881433 |
| FURTHER IDENTIFICATION: | ISSUE |
| DATE OF ISSUE: | OCTOBER 4, 2010 |
| BENEFICIARY: | WEST VIRGINIA MUNICIPAL BOND<br>COMMISSION, ATTN: SARA BOARDMAN<br>(REFER TO LC TEXT FOR FULL DETAILS)<br>1207 QUARRIER STREET, SUITE 401<br>CHARLESTON, WV 25301 |
| APPLICANT: | AMERICAN WATER CAPITAL CORP.<br>ON BEHALF OF WEST VIRGINIA-AMERICAN<br>WATER COMPANY<br>1600 PENNSYLVANIA AVENUE<br>CHARLESTON, WV 25302-3932 |
| DATE AND PLACE OF EXPIRY: | OCTOBER 14, 2011<br>AT OUR COUNTER |
| DOCUMENTARY CREDIT AMOUNT: | USD55,180.00 |
| AVAILABLE WITH: | JPMORGAN CHASE BANK, N.A.<br>TAMPA, FLORIDA<br>BY PAYMENT |

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010
OUR L/C NO.: TFTS-881433

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL 12 MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST 60 DAYS PRIOR TO THE CURRENT EXPIRY DATE WE SEND NOTICE IN WRITING TO YOU VIA SWIFT, OR HAND DELIVERY AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD. HOWEVER IN NO EVENT SHALL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED BEYOND THE FINAL EXPIRY DATE OF JUNE 1, 2022. UPON SUCH NOTICE TO YOU, YOU MAY DRAW ON US AT SIGHT FOR AN AMOUNT NOT TO EXCEED THE BALANCE REMAINING IN THIS LETTER OF CREDIT WITHIN THE THEN-APPLICABLE EXPIRY DATE, BY YOUR SWIFT OR PRESENTATION OF YOUR DRAFT AND DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF YOUR OFFICIALS READING AS FOLLOWS:
QUOTE
THE AMOUNT OF THIS DRAWING USD ..... UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NUMBER TFTS-881433 REPRESENTS FUNDS DUE US AS WE HAVE RECEIVED NOTICE FROM JPMORGAN CHASE BANK, N.A. OF THEIR DECISION NOT TO AUTOMATICALLY EXTEND LETTER OF CREDIT NUMBER TFTS-881433 AND THE UNDERLYING OBLIGATION REMAINS OUTSTANDING.
UNQUOTE

IN THE EVENT THIS LETTER OF CREDIT IS SUBSEQUENTLY AMENDED BY US TO EITHER:
I) RESCIND A NOTICE OF NON-EXTENSION AND TO EXTEND THE EXPIRY DATE HEREOF TO A FUTURE DATE, OR
II) EXTEND THE EXPIRY DATE TO A DATE THAT IS AFTER THE STATED FINAL EXPIRY DATE HEREOF,
SUCH EXTENSION SHALL BE FOR THAT SINGLE PERIOD ONLY AND THIS LETTER OF CREDIT WILL NOT BE SUBJECT TO ANY FUTURE AUTOMATIC EXTENSIONS UNLESS OTHERWISE STATED.

ADDITIONAL DETAILS:
BENEFICIARY FULL NAME AND ADDRESS:
WEST VIRGINIA MUNICIPAL BOND COMMISSION
ON BEHALF OF THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY
AS REGISTERED OWNER OF THE BOONE COUNTY PUBLIC SERVICE
DISTRICT WATER REVENUE BONDS, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010
OUR L/C NO.: TFTS-881433

ATTN: SARA BOARDMAN
1207 QUARRIER STREET, SUITE 401
CHARLESTON, WV 25301

THIS LETTER OF CREDIT IS AVAILABLE WITH JPMORGAN CHASE BANK, N.A. AGAINST PRESENTATION OF YOUR DRAFT AT SIGHT DRAWN ON JPMORGAN CHASE BANK, N.A., WHEN ACCOMPANIED BY THE DOCUMENTS INDICATED HEREIN.

BENEFICIARY'S DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF ITS OFFICIALS READING AS FOLLOWS:
"THE AMOUNT OF THIS DRAWING, USD....., UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. TFTS-881433 REPRESENTS FUNDS DUE US AS BOONE COUNTY PUBLIC SERVICE DISTRICT IS IN MONETARY DEFAULT OF THOSE CERTAIN BOONE COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED OCTOBER 14, 2010 (THE "BONDS") DUE TO ITS FAILURE TO MAKE DEBT SERVICE PAYMENTS ON THE LOANS AS AND WHEN DUE, AND PAYMENT HAS NOT BEEN RECEIVED FROM ANY OTHER SOURCE. THE AMOUNT OF THIS DRAW ON YOUR LETTER OF CREDIT NUMBER TFTS-881433 DOES NOT EXCEED THE AMOUNT OF SUCH MONETARY DEFAULT."

PLEASE ADDRESS ALL CORRESPONDENCE AND ANY DRAWINGS HEREUNDER TO:
JPMORGAN CHASE BANK, N.A.
C/O JPMORGAN TREASURY SERVICES
STANDBY LETTER OF CREDIT DEPT., 4TH FL
10420 HIGHLAND MANOR DRIVE,
TAMPA, FLORIDA 33610
CUSTOMER SERVICE NUMBER IS TOLL FREE 1-800-634-1969 AND CHOOSE OPTION 1 OR E-MAIL ADDRESS: GTS.CLIENT.SERVICES@JPMCHASE.COM
PLEASE INCLUDE OUR LETTER OF CREDIT NUMBER IN ALL CORRESPONDENCE.

THIS LETTER OF CREDIT IS NOT AVAILABLE FOR DRAWING UNTIL OCTOBER 14, 2010.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED.

THE NUMBER AND THE DATE OF OUR CREDIT AND THE NAME OF OUR BANK MUST BE QUOTED ON ALL DRAFTS REQUIRED.

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010
OUR L/C NO.: TFTS-881433

EXCEPT AS OTHERWISE SPECIFIED HEREIN, THE LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

THIS LETTER OF CREDIT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

AUTHORIZED SIGNATURE

Jon P. Pierson
Assistant Vice President

163406 Andrew J Kosik

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010

L/C NO.: TFTS-881433 ITEM NO: 0001

TO:
WEST VIRGINIA MUNICIPAL BOND
COMMISSION, ATTN: SARA BOARDMAN
(REFER TO LC TEXT FOR FULL DETAILS)
1207 QUARRIER STREET, SUITE 401
CHARLESTON, WV 25301

RE: TFTS-881433

WEST VIRGINIA MUNICIPAL BOND COMMISSION
ON BEHALF OF THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE OF LETTER OF CREDIT BANK

THE UNDERSIGNED OFFICER OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, NEW YORK, NEW YORK (THE "BANK"), HEREBY CERTIFIES IN CONNECTION WITH THE ISSUANCE BY THE BANK OF ITS LETTER OF CREDIT, NO. TFTS-881433, DATED OCTOBER 4, 2010 IN THE AMOUNT OF USD55,180.00 (THE "LETTER OF CREDIT"), TO
WEST VIRGINIA MUNICIPAL BOND COMMISSION
ON BEHALF OF THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY
AS REGISTERED OWNER OF THE BOONE COUNTY PUBLIC SERVICE
DISTRICT WATER REVENUE BONDS, SERIES 2010 A
(WEST VIRGINIA INFRASTRUCTURE FUND) (THE "ISSUER")
FOR AND ON BEHALF OF THE BANK, AS FOLLOWS:

1. THE BANK IS A NATIONAL BANKING ASSOCIATION UNDER THE LAWS OF THE UNITED STATES OF AMERICA AND IS ABLE TO DO BUSINESS IN THE STATE OF WEST VIRGINIA WITH THE POWER AND AUTHORITY TO ISSUE AND DELIVER THE LETTER OF CREDIT UNDER APPLICABLE LAW.

JPMorganChase

JPMorgan Chase Bank, N.A.
Global Trade Services
300 South Riverside Plaza
Mail Code IL1-0236
Chicago, IL 60606-0236

OCT 4, 2010

L/C NO.: TFTS-881433 ITEM NO: 0001

TO:
WEST VIRGINIA MUNICIPAL BOND
COMMISSION, ATTN: SARA BOARDMAN
(REFER TO LC TEXT FOR FULL DETAILS)
1207 QUARRIER STREET, SUITE 401
CHARLESTON, WV 25301

2. THE LETTER OF CREDIT HAS BEEN DULY AUTHORIZED, EXECUTED AND DELIVERED BY THE BANK.

3. WE HAVE BEEN ADVISED THAT LETTER OF CREDIT TFTS-881433 IS PROVIDED TO SECURE CERTAIN BOONE COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2010 A (WEST VIRGINIA INFRASTRUCTURE FUND) AND SECURE THE PAYMENT OF UP TO USD55,180.00, WHICH WE ARE ADVISED IS APPROXIMATELY EQUAL TO TWO YEARS' DEBT SERVICE ON THE ISSUER'S WATER REVENUE BONDS, SERIES 2010 A DATED OCTOBER 14, 2010.. THE WEST VIRGINIA MUNICIPAL BOND COMMISSION LETTER OF CREDIT (TFTS-881433) HAS BEEN DELIVERED BY THE BANK PURSUANT TO AN APPLICATION FOR IRREVOCABLE STANDBY LETTER OF CREDIT.

IN WITNESS WHEREOF, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, HAS CAUSED THIS CERTIFICATE TO BE EXECUTED BY A DULY AUTHORIZED OFFICER, THIS 4 TH DAY OF OCTOBER, 2010.

JPMORGAN CHASE BANK, N.A.

BY: _____

AUTHORIZED OFFICER Jon P. Pierson
Assistant Vice President

0104-08-0675-0006

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO
ATTENTION OF

OCT 29 2009

Operations and Readiness Division
Regulatory Branch
Cox Fork –LRH-2009-00614-BCR

Boone County PSD
P.O. Box 287
Danville, West Virginia 25053

Dear Sirs:

I refer to the information received regarding your request to perform work in waters of the United States (U.S.). You are requesting authorization to install 62 water line crossings associated with the Turtle Creek/Corridor G Water Line Extension Project. The proposed project is located in tributaries of the Big Coal River, in Boone County, West Virginia.

The Corps of Engineers authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act requires that a Department of the Army (DA) permit be obtained prior to placing dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires that a DA permit be obtained for any work in, on, over or under a navigable water.

Your project has been reviewed for compliance with the terms and conditions of Nationwide Permits (NWPs) under the March 19, 2007, Federal Register, Issuance of Nationwide Permits (72 FR 11092). NWPs are a form of authorization wherein it has been previously determined the impacts to the aquatic environment would be minimal, provided the project is completed within the terms and conditions of the applicable permit.

To the extent that the Corps has jurisdiction over the discharge of dredged or fill material associated with the project, the proposed activity meets the criteria for NWP 12 Utility Line Activities. Please note you must comply with all applicable terms and conditions of the enclosed material for this authorization to be valid.

Please be aware this nationwide permit authorization does not obviate the requirement to obtain state or local assent required by law for the activity. If you have any questions concerning the above, please contact Noah Kennedy at 304-399-5710.

Sincerely,

Michael E. Hatten
Regulatory Team Leader
South/Transportation Section

Enclosures
Copies Furnished:

Mr. Roger Anderson
WV Division of Natural Resources
P. O. Box 67
Elkins, West Virginia 26241

Mr. Lyle Bennett
WV Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

S. Beth Burdette
Potesta & Associates, Inc.
7012 MacCorkle Avenue, SE
Charleston, West Virginia 25304

RECEIVED
OCT 30 2009

# 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 14th day of September, 2009.

CASE NO. 09-1413-PWD-PC

BOONE COUNTY PUBLIC SERVICE DISTRICT,
a public utility, Danville, Boone County.

Petition for consent and approval of a Project Cooperation Agreement between the District and the Department of the Army for design and construction assistance relating to the District's Turtle Creek water extension project.

## COMMISSION ORDER

The Commission grants its prior consent for a public service district to enter into an agreement to receive construction and design services and a grant.

## BACKGROUND

On August 21, 2009, Boone County Public Service District petitioned for the Commission's prior consent for Boone County to accept a $1,500,000 grant and construction and design services from the United States Army Corps of Engineers relating to Boone County's Turtle Creek/Corridor G extension Project. Petition pp. 1-3 & Attachments.

Boone County advised that the Corps of Engineers has agreed to participate in the Project's design and construction and has prepared a draft Project Cooperation Agreement that includes the terms of the Corps of Engineers' grant. Boone County attached a copy of that agreement. On August 10, 2009, Boone County's board approved entry into the agreement with the Corps of Engineers. See Resolution attached to Petition.

The Corps of Engineers' grant contains stimulus funds from the American Recovery and Reinvestment Act, and to obligate the stimulus funds the agreement must be executed by September 26, 2009. Boone County cannot enter into the agreement, however, without the Commission's prior consent and approval. Petition p. 2.

To receive the Corps of Engineers' grant, Boone County must secure $500,000 in funding for the project, which Boone County believes will be obtained from a grant from the Boone County Commission, a contribution in aid of construction from West Virginia-American Water Company, and a grant and a loan from the West Virginia Infrastructure and Jobs Development Council. Petition p. 2.

Boone County asserted that the Project Cooperation Agreement is fair and reasonable and in the public interest and, therefore, should be given prompt review and approval by the Commission. Petition p. 2.

On September 4, 2009, Commission Staff recommended that the petition be granted. Initial & Final Joint Staff Memorandum pp. 3-4. Technical Staff advised that the Project will serve about 181 customers. Id. p. 2.

Staff recommended that the Commission, pursuant to W. Va. Code §16-13A-25, grant its prior consent, without approving the underlying terms and conditions, for Boone County to enter into the agreement with the Corps of Engineers for engineering and design services and to receive a $1,500,000 grant. Initial & Final Joint Staff Memorandum p. 2.

Staff advised that

> Boone County should be required to separately file for a certificate of convenience and necessity for this Project at the appropriate time and for Commission approval of any further funding loan or grant agreements.

Id. p. 3.

Further, Staff stated that its review of the agreement was limited to exploring potential rate impacts the obligations may have on Boone County's current ratepayers. In this proceeding, Staff has not conducted a thorough legal and financial review of the entire agreement, and Staff encouraged Boone County to have its legal and financial consultants review the agreement. Initial & Final Joint Staff Memorandum p. 3.

On September 10, 2009, Boone County advised that it concurred with the Staff recommendation. Ltr. p. 1.

## DISCUSSION

By statute, a public service district is required to obtain the Commission's permission to accept a grant, as follows:

> Any public service district . . . is authorized . . . to accept . . . grants . . . for the purpose of paying part or all of the costs of construction or acquisition of water systems . . . .

W. Va. Code § 16-13A-24.

> [A] public service district shall not . . . exercise any of the powers conferred by the provisions of [W. Va. Code § 16-13A-24], without the prior consent and approval of the public service commission . . . .

W. Va. Code § 16-13A-25. That same statute requires a public service district to obtain the Commission's prior consent before entering into a contract for engineering and design services:

> [A] public service district shall not . . . enter into contracts for the provision of engineering, design or feasibility studies . . . without the prior consent and approval of the public service commission . . .

It is reasonable for Boone County to receive a $1,500,000 grant, as well as design and construction assistance, from the Corps of Engineers for the Turtle Creek/Corridor G extension Project. The Commission will grant its prior consent for Boone County to enter into the Project Cooperation Agreement.

This consent, however, does not eliminate the need for Boone County to obtain a certificate of public convenience and necessity authorizing the construction of this project. Furthermore, Boone County must obtain the Commission's consent prior to entering into any further funding arrangements.

Because this grant comes from federal stimulus money, the Commission will provide its statutorily required consent for the receipt of this funding.

## FINDINGS OF FACT

1. Boone County has requested the Commission's prior consent for Boone County to enter into a Project Cooperation Agreement with the Corps of Engineers, by which the Corps of Engineers will provide design and construction assistance and a $1,500,000 grant to assist with the Turtle Creek/Corridor G extension Project. Petition pp. 1-3 & attachments.

2. Staff recommends that the petition be granted. Initial & Final Joint Staff Memorandum pp. 1-3.

## CONCLUSIONS OF LAW

1. It is reasonable for Boone County to receive a $1,500,000 grant, as well as design and construction assistance, from the Corps of Engineers for the Turtle Creek/Corridor G extension Project.

2. Because this grant comes from federal stimulus money, the Commission should quickly provide its required consent for the receipt of this funding.

## ORDER

IT IS THEREFORE ORDERED that Boone County's petition is granted. Without approving the underlying terms and conditions, the Commission grants its prior consent, pursuant to W. Va. Code §§ 16-13A-24 and 16-13A-25, for Boone County to enter into the Project Cooperation Agreement to receive a $1,500,000 grant, as well as design and construction assistance, from the Corps of Engineers for the Turtle Creek/Corridor G extension Project.

IT IS FURTHER ORDERED that Boone County's request for expedited treatment is granted.

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

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

A True Copy, Teste: Sandra Squire

Sandra Squire
Executive Secretary

CLW/sek
091413c.wpd

IC-2
(7/09)

# GRANT AGREEMENT
(2007W-975)

This Grant Agreement entered into by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the BOONE COUNTY 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 $232,663 (the "Grant") for the purposes of the design, acquisition or construction 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 purposes of designing, acquiring or constructing the project described in Exhibit B attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Grant Agreement sets forth the Council, the Authority and the Governmental Agency's understandings 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. The Project budget shall not be amended unless the Governmental Agency has received the prior written consent of the Council.

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. Unless agreed to by the Council prior to the commencement of construction, the Grant shall be the last dollars expended on the Project.

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 Authority shall wire the approved requisition amount using the wiring instructions provided in Exhibit A, unless the Council and Authority are provided replacement instructions in writing.

5. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit B.

6. 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.

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

8. The Governmental Agency shall list the Grant provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

9. This Grant 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.

BOONE COUNTY PUBLIC SERVICE DISTRICT

By: _____
Its: Chairman
Date: October 14, 2010

(SEAL)

Attest: _____
Its: Secretary

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Its: ~~Executive Director~~
Date: October 14, 2010

(SEAL)

Attest: _____
Its: Authorized Officer

**[To Be Placed on Letterhead]**

**Exhibit A**

**Wiring Instructions**

_____, 20__

**Boone County Public Service District**
**P.O. Box 287**
**Danville, WV 25053**

| | |
|---|---|
| Payor: | West Virginia Water Development Authority |
| Source: | Grant Proceeds |
| Amount: | $_____ |
| Date: | _____, 20__ |
| Form: | Electronic Funds Transfer |
| Payee: | Boone County Public Service District |
| Bank: | Bankers Bank of KY (for the benefit of Boone County Bank)<br>300 State Street, Madison, WV 25130 |
| Bank Contact: | Melissa Summers |
| Telephone: | (304) 369-2407 |
| Beneficiary Routing No.: | 083901896 |
| Beneficiary Account No.: | 203159 |
| Receiving Account No.: | 100008408 |
| Account Name: | Boone County Bank - Boone County Public Service District Construction Account |

## Exhibit B

## Project Description

The Project consists of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Governmental Agency, consisting of a water line extension to serve approximately 181 new customers in the US 119/Corridor G, Long Branch Road, Prichard Road, Arden Lane, Route 119/42, Mud River Road, Turtle Creek Road, Raccoon Branch Road, Indian Grave Road, Olive Branch Road and Low Gap Road areas.

# Boone County Commission

Boone County Courthouse Annex
206 Court Street • Suite 300
Madison, WV 25130

Phone (304) 369-7301
Fax (304) 369-7306

MICKEY BROWN ATHOLL W. HALSTEAD EDDIE HENDRICKS


April 7, 2009

Mr. Bobby Lewis, Director
Community Development Division
West Virginia Development Office
Bldg 6, Room 553
1900 Kanawha Blvd., E.
Charleston, WV 25305

Dear Mr. Lewis,

I am please to resubmit the Boone County Commission's $ 1,500,000.00 Turtle Creek / Corridor G Waterline Extension project for HUD-Small Cities Block Grant funding consideration. This project was submitted in 2007 but the Route 5 / Prenter Road health issues took precedence over all other projects in the County. The Boone County Commission has committed $300,000.00 toward the project. The Commission and the Boone County PSD have acquired Potesta and Associates to complete the design of the project. The design is 75% completed at this time. The West Virginia American Water Company has pledged $216,000.00 toward the project.

This project is vital to the stability of the area. Currently there are 105 customers that have petitioned the Boone County PSD for service.

If you have any questions, please feel free to contact me or the Regional Intergovernmental Council.

Sincerely,

Atholl Halstead
President

WEST VIRGINIA
AMERICAN WATER

Wayne D. Morgan, President
West Virginia American Water
1600 Pennsylvania Avenue
Charleston, WV 25302
P: 304-340-2000
F: 304-340-2076
E: wayne.morgan@amwater.com

October 23, 2009

Mr. Clarence V. Waller, Jr., Chairman
Boone County Public Service District
P.O. Box 287
Danville, West Virginia 25053

Re: Turtle Creek/Corridor G Water Extension Project
2007W-975

Dear Chairman Waller:

West Virginia American Water ("WVAW") is pleased to participate in the above-referenced public-private partnership project with the Boone County Public Service District ("BCPSD") and the Boone County Commission to extend water service along Corridor G from Turtle Creek to the Mud River ("Project").

WVAW agrees to provide a $1,000 per-customer-per-signed-user-agreement investment in this Project expected to be $145,000 plus all customer meters. The final WVAW commitment will be determined by the number of signed user agreements at the time of the Project's construction bid award and will be subject to the Company's ability to obtain investment capital. In addition, WVAW agrees to remit directly to the West Virginia Municipal Bond Commission a use fee payment equivalent to the debt service obligation on BCPSD's $1,062,000, 0%, 40-year West Virginia Infrastructure and Jobs Development Council ("WVIJDC") loan associated with this Project. WVAW's financial commitment is contingent on the BCPSD's ability to obtain additional Project funding consisting of a WVIJDC grant of $348,635, a $1,500,000 US Army Corps of Engineers grant and a Boone County Commission contribution of $300,000.

West Virginia American Water has adequate treatment plant capacity to serve the Project and agrees to provide operation and maintenance services once the Project is completed similar to other BCPSD projects. The existing O&M agreement will have to be modified to accommodate this commitment. Within 90 days of completion of Project construction, the BCPSD will identify a portion of the Project to be owned by WVAW based on its proportionate share of the Project costs and transfer such through a bill of sale. All previous project transfers must be completed prior to WVAW's financial investment being made in this project. In addition, BCPSD agrees to provide WVAW with an electronic copy of the WVIJDC's loan documents within 30 days of financial closing.

This commitment supersedes all previous WVAW commitments associated with this Project. If you have any questions or require any additional information, please call.

Sincerely,

Wayne D. Morgan
President

cc: Mike Miller
Mark Sankoff

DTC

PWSID#: WV3300336

# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301
Telephone (304)558-2981

## PERMIT

**PROJECT:** (Water) Turtle Creek/Corridor G Water Line Extensions

**PERMIT NO.:**18,359

**LOCATION:** Turtle Creek **COUNTY:** Boone **DATE:** 7-17-2009

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Boone County Public Service District**
**P. O. Box 287**
**Danville, West Virginia 25053**

is hereby granted approval to: install approximately 24,100 LF of 8", 12,200 LF of 6" and 7,400 LF of 2" water line; and all necessary valves and appurtenances.

Facilities are to serve **181 customers** along Turtle Creek/Corridor G in the Boone County Public Service District.

**NOTE:** **This permit is contingent upon all new water line being disinfected, flushed and bacteriologically tested, prior to use.**

The Environmental Engineering Division of the **OEHS St. Albans District Office, (304) 722-0611,** is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

Williams S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:cls

pc: Potesta & Associates, Inc.
David Carovillano, P.E.
James W. Ellars, P.E., PSC
Amy Swann, PSC
Boone County Health Department
OEHS-EED St. Albans DO

WEST VIRGINIA
**Water Development Authority**
*Celebrating 34 Years of Service* ***1974 - 2008***

October 14, 2010

Boone County Public Service District
Water Revenue Bonds, Series 2010 A
(West Virginia Infrastructure Fund)

TO WHOM IT MAY CONCERN:

In reliance upon a certificate of Bassett & Lowe, CPA's, independent certified public accountants and Steptoe & Johnson PLLC, bond counsel, stating that the parity and coverage requirements have been met, the undersigned duly authorized representative for the West Virginia Water Development Authority, the registered owner of the entire outstanding aggregate principal amount of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund), (the "Bonds"), in the original aggregate principal amounts of $1,062,000 by Boone County Public Service District (the "Issuer"), under the terms of the resolution authorizing the Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding: (i) Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated April 26, 2000, issued in the original aggregate principal amount of $2,130,000 (the "Series 2000 A Bonds); and (ii) Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), dated April 26, 2000, issued in the original aggregate principal amount of $4,909,161 (the "Series 2000 B Bonds") (collectively, the "Prior Bonds").

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Carol A. Cummings
Authorized Representative

09.29.10
091620.00002



180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wvwda.org

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

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

Writer's Contact Information

# CLOSING MEMORANDUM

**To:** **Financing Team**

**From:** **John C. Stump, Esquire**

**Date:** **October 14, 2010**

**Re:** **Boone County Public Service District Water Revenue Bonds, Series 2010 A (West Virginia Infrastructure Fund)**

---

## 1. DISBURSEMENTS TO THE BOONE COUNTY PUBLIC SERVICE DISTRICT

| | |
|---|---|
| Payor: | West Virginia Infrastructure Fund |
| Amount: | $36,500.00 |
| Form: | Wire |
| Payee: | Boone County Public Service District<br>300 State Street, Madison, WV 25130 |
| Receiver Bank: | BANKERS BANK OF KY |
| Receiver Bank ABA: | 083901896 |
| Beneficiary Bank: | Boone County Bank |
| Beneficiary Bank Account #: | 203159 |
| Beneficiary Name: | Boone County Public Service District |
| Beneficiary Account #: | 100008408 |
| Contact: | Melissa Summers (304) 369-2407 |
| Account: | Series 2010 A Bonds Construction Fund |
| Draw Contact: | Terry Martin (304) 744-4258 |

**BOONE COUNTY PUBLIC SERVICE DISTRICT**
**2007W-975**

**RESOLUTION APPROVING INVOICES RELATING TO CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED WATER PROJECT AND AUTHORIZING PAYMENT THEREOF,**

**WHEREAS**, the Boone County Public Service District has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Water Project funded by the WV Infrastructure & Jobs Development Council (IJDC); U.S Army Corps of Engineers (USACE), Boone County Commission (County) and the West Virginia American Water Company (WVAWC) and find as follows:

a) That none of the items for which 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 paid is or was necessary in connection with the Project and constitutes a Cost of the project.

c) That each of such costs has been otherwise properly incurred.

d) That the payment for each of the items proposed is due and owing.

**NOW, THEREFOR, BE IT RESOLVED** The Boone County Public Service District by as follows: There is hereby authorized and directed the payment of the attached invoices from the Project Fund as follows:

| Vendor | Total | IJDC Loan | IJDC Grant | USACE | County | WVAWC |
|---|---|---|---|---|---|---|
| Steptoe & Johnson | 24,000.00 | 24,000.00 | 0 | 0 | 0 | 0 |
| Huntington Bank | 500.00 | 500.00 | 0 | 0 | 0 | 0 |
| Potesta | 16,253.00 | 12,000.00 | 0 | 0 | 4,253.00 | 0 |
| Total | 40,753.00 | 36,500.00 | 0 | 0 | 4,253.00 | 0 |

**ADOPTED BY the Boone County Public service District**, at the meeting held on the 13th day of September, 2010.

By: _____
Its: Chairman

Contact: Terry Martin (304) 744-4258

# BOONE COUNTY PUBLIC SERVICE DISTRICT

## WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM) AND SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND)

## BOND RESOLUTION

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BOONE COUNTY PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BOONE COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $2,130,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), AND NOT MORE THAN $4,909,161 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS 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 RESOLVED BY THE PUBLIC SERVICE BOARD OF BOONE COUNTY PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation"), is adopted pursuant to the provisions of Chapter 16, Article 13A, Chapter 16, Article 13C and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. Boone County Public Service District (the "Issuer") is a public service district and a public corporation and political subdivision of the State of West Virginia in Boone County of said State.

B. The Issuer presently owns and operates a public waterworks system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain improvements and extensions to the existing public waterworks system of the Issuer, consisting of a series of transmission and distribution pipelines and storage and booster facilities to interconnect the Issuer's various water facilities, together with all appurtenant facilities (collectively, the "Project") (the Project and any further improvements or extensions thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Drinking Water Treatment Revolving Fund and the West Virginia Infrastructure Fund pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds in the total aggregate principal amount of not more than $7,039,161 in two series, being the Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), in the aggregate principal amount of not more than $2,130,000 (the "Series 2000 A Bonds"), and the Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), in the aggregate principal amount of not more than $4,909,161 (the "Series 2000 B Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2000 A Bonds and the Series 2000 B Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, including the Administrative Fee (as hereinafter defined) for the Series 2000 A Bonds, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2000 A Bonds and the Series 2000 B Bonds and such other expenses as may be

necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2000 A Bonds and the Series 2000 B Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2000 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health (the "BPH") and its Series 2000 B Bonds be sold to the Authority pursuant to the terms and provisions of the loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), both loan agreements in form satisfactory to the respective parties (collectively, the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The Issuer will receive all of its revenues under and pursuant to an Agreement, dated October 28, 1996, as amended (the "Agreement"), by and between the Issuer and West Virginia-American Water Company (the "Company"), which Agreement has been approved by the Public Service Commission of West Virginia. The revenues to be paid by the Company to the Issuer under the Agreement will be sufficient to pay all costs of operation and maintenance of the System, to pay the principal of and interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds, and to make payments into all funds and accounts and other payments provided for herein.

I. The Company will obtain, and pay the fees associated with, letters of credit, surety bonds or other credit facilities to fund the Reserve Accounts (as hereinafter defined) for the benefit of the Commission, to be drawn upon in the event that at any time payments under the Agreement are inadequate to provide funds for the Issuer to make all payments required hereunder. In the event the Company will not obtain such letters of credit, surety bonds or other credit facilities, the Issuer shall obtain such letters of credit, surety bonds or other credit facility or fund the Reserve Accounts in the amounts required herein and in the Loan Agreement.

J. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and

operation of the Project and the System and issuance of the Series 2000 A Bonds and the Series 2000 B Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2000 A Bonds and the Series 2000 B Bonds or such final order will not be subject to appeal or rehearing.

K. The Project has been reviewed and determined to be technically and financially feasible by the Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2000 A Bonds and the Series 2000 B Bonds by those who shall be the 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 equal benefit, protection and security of the Registered Owners of any and all of such Series 2000 A Bonds and the Series 2000 B Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement for the Series 2000 A Bonds.

"Agreement" means initially, the Agreement, dated October 28, 1996, by and between the Issuer and the Company, as it may be or may have been amended from time to time, or any subsequent replacement or renewal Agreement, as approved by the Public Service Commission of West Virginia.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2000 A Bonds and the Series 2000 B Bonds, or any other agency, board or department of the State of

West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the BPH and the Council under the Act.

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

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

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

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

"Bonds" means, collectively, the Series 2000 A Bonds and the Series 2000 B Bonds and any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

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

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

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

"Closing Date" means the date upon which there is an exchange of the Series 2000 A Bonds and the Series 2000 B Bonds for all or a portion of the proceeds of the Series 2000 A Bonds and the Series 2000 B Bonds from the Authority.

"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.

"Company" means West Virginia-American Water Company, a West Virginia corporation.

"Consulting Engineers" means the Company, so long as the Agreement is in effect, and upon the termination of the Agreement, any qualified engineer or firm of

engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System or any portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided, however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any other agency of the State of West Virginia that succeeds to the functions of the Council.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"DWTRF Regulations" means the regulations for the West Virginia DWTRF Program set forth in the West Virginia Code of State Regulations.

"FDIC" means the Federal Deposit Insurance Corporation and 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.

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

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

"Grants" means all moneys received by the Issuer on account of any Grant for the Project.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined. The initial Gross Revenues

anticipated to be received by the Issuer will be limited to the amounts payable by the Company to the Issuer under the Agreement.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"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 the System in the normal operation of its business and affairs.

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

"Letter of Credit" means, collectively, the letter of credit, letters of credit, surety bond or other credit facility obtained by the Company or the Issuer to fund the Reserve Accounts for the benefit of the Commission, and any subsequent replacement or renewal Letter of Credit.

"Loan Agreement" means, collectively, the respective Loan Agreements heretofore entered, or to be entered, into by and between the Issuer and the Authority, on behalf of the BPH, providing for the purchase of the Series 2000 A Bonds from the Issuer by the Authority and by and between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2000 B Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 2000 A Bonds and the Series 2000 B Bonds, plus accrued interest and premium, if any, less original issue discount, if any.

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

"Outstanding," when used with reference to Bonds, and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar, at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity designated as such for the Series 2000 A Bonds and the Series 2000 B Bonds in the Supplemental Resolution.

"Project" means the Project as described in Section 1.02B 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, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC 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 Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code or any predecessor to the Code.

"Reserve Accounts" means, collectively, the Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

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

"Series 2000 Bonds Construction Trust Fund" means the Series 2000 Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2000 A Bonds" means the Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), of the Issuer, authorized by this Resolution.

"Series 2000 A Bonds Sinking Fund" means the Series 2000 A Bonds Sinking Fund established by Section 5.02 hereof.

"Series 2000 A Bonds Reserve Account" means the Series 2000 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2000 B Bonds" means the Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), of the Issuer, authorized by this Resolution.

"Series 2000 B Bonds Sinking Fund" means the Series 2000 B Bonds Sinking Fund established by Section 5.02 hereof.

"Series 2000 B Bonds Reserve Account" means the Series 2000 B Bonds Reserve Account established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Series 2000 A Bonds and the Series 2000 B Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2000 A Bonds and the Series 2000 B Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2000 A

Bonds and the Series 2000 B Bonds, and not so included, may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, any reserve account which may hereafter be established.

"System" means the existing waterworks system of the Issuer, as expanded and improved by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the waterworks system from any sources whatsoever.

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

"West Virginia DWTRF Program" means the West Virginia Drinking Water Treatment Revolving Fund program established by the State, administered by the BPH and funded by capitalization grants awarded to the State pursuant to the federal Safe Drinking Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the acquisition, construction and improvement of drinking water projects.

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

## ARTICLE II

## AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of $31,270,552, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2000 A Bonds and the Series 2000 B Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and has entered into or will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Authority, the BPH and the Council.

The cost of the Project is estimated to be $31,270,552, of which $2,130,000 will be obtained from proceeds of the Series 2000 A Bonds, $4,909,161 will be obtained from proceeds of the Series 2000 B Bonds, $1,250,000 will be obtained from the Small Cities Block Grant, $1,000,000 will be obtained from the Appalachian Regional Commission Grant, $1,471,236 will be obtained from the Abandoned Mine Lands Grant, $960,000 will be obtained from the United States Economic Development Administration Grant, $1,200,000 will be obtained from the West Virginia Division of Environmental Protection Coal Mitigation Fund Grant, $1,000,000 will be obtained from a grant from the Governor's Office and $17,350,155 will be from funds contributed by the Company.

## ARTICLE III

## AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2000 A Bonds and the Series 2000 B Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2000 A Bonds and the Series 2000 B Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the Series 2000 A Bonds and the Series 2000 B Bonds of the Issuer. The Series 2000 A Bonds and the Series 2000 B Bonds shall be issued each as a single bond, designated respectively as "Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program)," in the principal amount of not more than $2,130,000, and "Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund)," in the principal amount of not more than $4,909,161, and both shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2000 A Bonds and the Series 2000 B Bonds remaining after capitalizing interest on the Series 2000 A Bonds and the Series 2000 B Bonds, if any, shall be deposited in or credited to the Series 2000 Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2000 A Bonds and the Series 2000 B Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2000 A Bonds and the Series 2000 B Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2000 A Bonds and the Series 2000 B Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of each series of the Series 2000 A Bonds and the Series 2000 B Bonds. The Series 2000 A Bonds and the Series 2000 B Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully

registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2000 A Bonds and the Series 2000 B Bonds shall be executed in the name of the Issuer by the Chairman, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2000 A Bonds and the Series 2000 B Bonds shall cease to be such officer of the Issuer before the Series 2000 A Bonds and the Series 2000 B Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2000 A Bonds and the Series 2000 B Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2000 A Bond or Series 2000 B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2000 A Bonds and the Series 2000 B Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond 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 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2000 A Bonds and the Series 2000 B 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, in accepting the Series 2000 A Bonds and the Series 2000 B Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of

West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2000 A Bonds and the Series 2000 B Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Series 2000 A Bonds and the Series 2000 B Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging the Series 2000 A Bonds and the Series 2000 B Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond 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 exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2000 A Bonds or Series 2000 B Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any 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 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2000 A Bonds and the Series 2000 B Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2000 A Bonds and the Series 2000 B Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2000 A Bonds and the Series 2000 B Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2000 A Bonds and the Series 2000 B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2000 A Bonds and the Series 2000 B Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2000 A Bonds and the Series 2000 B Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2000 A Bonds and the Series 2000 B Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2000 A Bonds and the Series 2000 B Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2000 A Bonds and the Series 2000 B Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the Loan Agreement;

E. A copy of the Agreement;

F. A copy of the Letter of Credit; and

G. The unqualified approving opinion of bond counsel on the Series 2000 A Bonds and the Series 2000 B Bonds.

Section 3.10. Form of Bonds. The text of the Series 2000 A Bonds and the Series 2000 B Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2000 A
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-_____ $_____

KNOW ALL MEN BY THESE PRESENTS: That BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Boone County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), 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 as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20____, as set forth on EXHIBIT B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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").

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 Bureau for Public Health (the "BPH") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated _____, 2000.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system

of the Issuer (the "Project"); and (ii) to pay certain costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." 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 16, Article 13C of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Resolution duly adopted by the Issuer on _____, 2000, and a Supplemental Resolution duly adopted by the Issuer on _____, 2000 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2000, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2000 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2000 B Bonds, unexpended proceeds of the Bonds and proceeds of the Letter of Credit (as defined in the Bond Legislation). Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, unexpended proceeds of the Bonds and proceeds of the Letter of Credit. Pursuant to the Bond Legislation and as long as the Agreement (as defined in the Bond Legislation) is in effect, 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 100% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2000 B Bonds. In the event the Agreement is no longer in effect, the Issuer has covenanted and agreed to adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and the Loan Agreement. In the event the Letter of Credit is terminated

or reduced, the Issuer has covenanted and agreed to fund the Series 2000 A Bonds Reserve Account in the amounts required under the Bond Legislation and the Loan Agreement. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the 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 amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, BOONE COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated _____, 2000.

[SEAL]

_____
Chairman

ATTEST:

_____
Secretary

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION, as Registrar

_____
Authorized Officer

(Form of)

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2000 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Boone County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), 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 as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____. 1, 20___, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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").

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 by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2000.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further improvements or extensions thereto are herein called the

"System." 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 (the "Act"), and a Bond Resolution duly adopted by the Issuer on _____, 2000, and a Supplemental Resolution duly adopted by the Issuer on _____, 2000 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), DATED _____, 2000, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____ (THE "SERIES 2000 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2000 A Bonds, unexpended proceeds of the Bonds and proceeds of the Letter of Credit (as defined in the Bond Legislation). Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, unexpended proceeds of the Bonds and proceeds of the Letter of Credit. Pursuant to the Bond Legislation and as long as the Agreement (as defined in the Bond Legislation) is in effect, 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 100% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2000 A Bonds. In the event the Agreement is no longer in effect, the Issuer has covenanted and agreed to adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and the Loan Agreement. In the event the Letter of Credit is terminated or reduced, the Issuer has covenanted and agreed to fund the Series 2000 B Bonds Reserve Account in the amounts required under the Bond Legislation and the Loan Agreement. The Issuer has entered into certain further covenants with the registered owners of the Bonds for

the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the 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 amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, BOONE COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated _____, 2000.

[SEAL]

_____
Chairman

ATTEST:

_____
Secretary

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION, as Registrar

_____
Authorized Officer

(Form of)

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2000 A Bonds and the Series 2000 B Bonds shall be sold to the Authority, pursuant to the terms and conditions of the respective Loan Agreements. If not so authorized by previous resolution, the Chairman is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, 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, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority, the BPH and the Council the respective amended schedules, the forms of which will be provided by the BPH and the Council, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

(1) Revenue Fund; and

(2) Series 2000 Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Series 2000 A Bonds Sinking Fund;

(2) Series 2000 A Bonds Reserve Account (to be funded with the Letter of Credit);

(3) Series 2000 B Bonds Sinking Fund; and

(4) Series 2000 B Bonds Reserve Account (to be funded with the Letter of Credit).

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided in this Bond Legislation. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund all Operating Expenses of the System not otherwise paid by the Company pursuant to the Agreement.

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

Commission (i) commencing 3 months prior to the first date of payment of principal of the Series 2000 A Bonds, for deposit in the Series 2000 A Bonds Sinking Fund, an amount equal to 1/3 of the amount of principal which will mature and become due on the Series 2000 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2000 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2000 B Bonds, for deposit in the Series 2000 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2000 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2000 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account shall be funded with the Letter of Credit. In the event the Letter of Credit is terminated or reduced or in the event that the Authority and, as applicable, the BPH and/or the Council no longer shall require that the Letter of Credit be in place, the Issuer shall be required to fund the Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account, in the amount required under the Loan Agreement, unless such requirement is waived by the BPH and the Council.

(4) So long as the Letter of Credit is required to be and is in effect, no Renewal and Replacement Fund shall be required for the Series 2000 A Bonds and the Series 2000 B Bonds. In the event the Letter of Credit is terminated or reduced or in the event that the Authority and, as applicable, the BPH and/or the Council no longer shall require that the Letter of Credit be in place, the Issuer shall be required to establish a Renewal and Replacement

Fund in the amount required under the Loan Agreement, unless such requirement is waived by the BPH and the Council.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not permitted to be retained therein may be used to prepay installments of the Series 2000 A Bonds and the Series 2000 B Bonds or for any lawful purpose of the System.

Moneys in the Series 2000 A Bonds Sinking Fund and the Series 2000 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds, respectively, as the same shall become due. Moneys in the Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2000 A Bonds Sinking Fund and the Series 2000 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2000 A Bonds Sinking Fund and the Series 2000 B Bonds Sinking Fund 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 Series 2000 Bonds Construction Trust 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 payment, if any, due on the Series 2000 A Bonds and the Series 2000 B Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

As and when additional Bonds ranking on a parity with the Series 2000 A Bonds and the Series 2000 B Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional parity Bonds.

The Issuer shall not be required to make any further payments into the Series 2000 A Bonds Sinking Fund and the Series 2000 B Bonds Sinking Fund when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the Series 2000 A Bonds and the Series 2000 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2000 A Bonds

and the Series 2000 B Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2000 A Bonds Sinking Fund, the Series 2000 B Bonds Sinking Fund, the Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account created hereunder, and all amounts required for said funds shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at any time, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2000 A Bonds Sinking Fund, the Series 2000 B Bonds Sinking Fund, the Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2000 A Bonds Sinking Fund, the Series 2000 B Bonds Sinking Fund, the Series 2000 A Bonds Reserve Account and the Series 2000 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2000 A Bonds and the Series 2000 B Bonds, respectively, under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve account payments with respect to the Series 2000 A Bonds and the Series 2000 B Bonds 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 Bond Legislation. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement for the Series 2000 A Bonds.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. 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 the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. 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 debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

I. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 2000 A Bonds and the Series 2000 B Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2000 A Bonds, there shall first be deposited with the Commission in the Series 2000 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2000 A Bonds for the period commencing on the date of issuance of the Series 2000 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. From the proceeds of the Series 2000 B Bonds, there shall first be deposited with the Commission in the Series 2000 B Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2000 B Bonds for the period commencing on the date of issuance of the Series 2000 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2000 A Bonds, such moneys shall be deposited with the Depository Bank in the Series 2000 Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2000 A Bonds.

D. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2000 B Bonds, such moneys shall be deposited with the Depository Bank in the Series 2000 Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2000 B Bonds.

E. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2000 A Bonds shall be applied as directed by the BPH and any remaining proceeds of the Series 2000 B Bonds shall be applied as directed by the Council.

Section 6.02. Disbursements From the Series 2000 Bonds Construction Trust Fund.

A. On or before the Closing Date, the Issuer shall have delivered to the Authority and the BPH a report listing the specific purposes for which the proceeds of the Series 2000 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for the costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of proceeds from the Series 2000 A Bonds deposited in the Series 2000 Bonds Construction Trust Fund shall be made only after submission to the BPH of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit B, in compliance with the construction schedule and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

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

(B) 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) Each of such costs has been otherwise properly incurred; and

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

B. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments of all Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of proceeds from the Series 2000 B Bonds deposited in the Series 2000 Bonds Construction Trust Fund shall be made only after submission to, and approval from the Council, of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

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

(b) 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) Each of such costs has been otherwise properly incurred; and

(d) Payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Series 2000 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

## ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation 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 Series 2000 A Bonds and the Series 2000 B Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2000 A Bonds and the Series 2000 B Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2000 A Bonds and the Series 2000 B Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2000 A Bonds and the Series 2000 B Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2000 A Bonds and the Series 2000 B Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2000 A Bonds and the Series 2000 B Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2000 A Bonds and the Series 2000 B Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the Final Order of the Public Service Commission of West Virginia entered October 17, 1997, in Case No. 96-1338-W-PWD-CN, and such rates are hereby adopted.

So long as the Series 2000 A Bonds and the Series 2000 B Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2000 A Bonds and the Series 2000 B Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer 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 and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Series 2000 A Bonds and the Series 2000 B Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the BPH and the Council, 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 fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2000 A Bonds and the Series 2000 B Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, the BPH and the Council, 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 of and interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds. Any balance remaining after the payment of the Series 2000 A Bonds and the Series 2000 B Bonds and interest, if any, 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 duly adopted, 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 Revenue Fund or if the Renewal and Replacement Fund is created hereunder, then 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, in writing, determine upon consultation with a professional engineer 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 in accordance with the laws of the State. 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 consent of the BPH, the Council and the Authority, be remitted to the Commission for deposit in the Sinking Funds. Payment of such proceeds into the Sinking Funds, the Revenue Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

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 of the Bonds then Outstanding. 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 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and Section 7.07 hereof, 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 Series 2000 A Bonds and the Series 2000 B Bonds. All obligations issued by the Issuer after the issuance of the Series 2000 A Bonds and the Series 2000 B 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, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2000 A Bonds and the Series 2000 B Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

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 Series 2000 A Bonds and the Series 2000 B Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2000 A Bonds and the Series 2000 B Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority, the BPH 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 7.07. Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2000 A Bonds and the Series 2000 B Bonds, except with the prior written consent of the Authority, the BPH and the Council under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2000 A Bonds and the Series 2000 B Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions and improvements to the System or refunding any outstanding Bonds, or both such purposes.

In the event the Agreement is no longer in effect, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 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 then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals,

fees and charges for the System adopted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (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 theretofore or 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 Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2000 A Bonds and the Series 2000 B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2000 A Bonds and the Series 2000 B Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, 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 Bond Legislation.

Section 7.08. Books; Records and Audit. 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, the BPH and the Council, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority, the BPH and the Council such documents and information as they 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 grants or other sources of financing for the Project.

The Issuer shall permit the Authority, the BPH and the Council, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times 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 shall 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 Bond Legislation 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 and as prescribed by the Public Service Commission of West Virginia. 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 Council, the BPH, the Authority, or any other original purchaser of the Series 2000 A Bonds and the Series 2000 B Bonds, and shall mail in each year to any Holder or Holders of the Series 2000 A Bonds and the Series 2000 B Bonds and the Consulting Engineer, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net 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 Bond Legislation, and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations outstanding.

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 the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, 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 the Series 2000 A Bonds and the Series 2000 B Bonds, and shall submit said report to the BPH, the Council and the Authority, or any other original purchaser of the Series 2000 A Bonds and the Series 2000 B Bonds. Such audit report submitted to the BPH, the Authority and the Council shall include a statement that the

Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer 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 by the Consulting Engineers. 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 Issuer.

The Issuer shall permit the BPH, the Authority and the Council, or their 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 and the Council, or their 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 BPH, the Authority and the Council with respect to the System pursuant to the Act.

The Issuer shall provide the BPH with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit D of the Loan Agreement for the Series 2000 A Bonds or as promulgated from time to time.

Section 7.09. Rates. Prior to the issuance of the Series 2000 A Bonds and the Series 2000 B Bonds, equitable rates or charges for the use of, and service rendered by, the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 100% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2000 A Bonds and the Series 2000 B Bonds. In the event the Agreement is no longer in effect, the Issuer shall comply with the

requirements of Sections 4.1(b)(ii) and 5.2 of the Loan Agreement. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 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 and shall submit a copy of such budget to the Authority, the BPH and the Council within 30 days of adoption thereof. 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 a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the BPH and the Council and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the BPH and the Council and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority, the BPH and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers 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 as submitted to the Authority, the BPH and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority, the BPH 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 engineering services satisfactory to the Authority, the BPH and the Council 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 engineer shall certify to the Authority, the BPH, the Council 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 shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the BPH when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and federal standards.

The Issuer shall employ, or shall cause the Company to employ, qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain, or shall cause the Company to retain, such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

Section 7.12. 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 7.13. 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 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 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 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 7.14. 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 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2000 A Bonds and the Series 2000 B 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 Revenue Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Revenue 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) WORKER'S 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 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, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority, the BPH and the Council and the Issuer shall verify such insurance prior to commencement of construction. 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 7.16. 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 7.17. Completion, Operation and Maintenance of Project; Permits and Orders. The Issuer shall 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 federal and state requirements and standards. The Issuer shall take all steps to properly operate and maintain the System and make the necessary replacements due to normal wear and tear so long as the Series 2000 A Bonds and the Series 2000 B Bonds are outstanding. To the extent operation and maintenance is done by the Company, the Issuer shall enforce the provisions of the Agreement to fulfill compliance with this covenant.

The Issuer has obtained all permits 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 and the Council necessary for the financing, acquisition and construction of the Project, the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2000 A Bonds and the Series 2000 B Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Series 2000 A Bonds and the Series 2000 B Bonds.

Section 7.19. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the BPH and the Council with copies of all documents submitted to the Authority.

The Issuer shall also to comply with all applicable laws, rules and regulations issued by the Authority, the BPH, the Council or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.20. Securities Laws Compliance. The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2000 A Bonds and the Series 2000 B Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the BPH and the Council for written approval. The Issuer shall obtain the written approval of the BPH and the Council before expending any proceeds of the Series 2000 A Bonds and the Series 2000 B

Bonds held in "contingency" as set forth in the respective schedules attached to the Certificate of Consulting Engineer. The Issuer shall also obtain the written approval of the BPH and the Council before expending any proceeds of the Series 2000 A Bonds and the Series 2000 B Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the BPH, the Council and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

## ARTICLE VIII

## INVESTMENT OF FUNDS

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested 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 Bond Legislation, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

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 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 may make any and all investments permitted by this section through its own bond 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, or more often as reasonably requested by the Issuer, 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 Series 2000 A Bonds and the Series 2000 B Bonds are Outstanding.

## ARTICLE IX

## DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2000 A Bonds and the Series 2000 B Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2000 A Bonds and the Series 2000 B Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2000 A Bonds and the Series 2000 B Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2000 A Bonds and the Series 2000 B Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of a Bond; or

(3) 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 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2000 A Bond or a Series 2000 B 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 such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2000 A Bonds and the Series 2000 B 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 Registered Owners of the Series 2000 A Bonds and the Series 2000 B Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2000 A Bonds and the Series 2000 B Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2000 A Bonds and the Series 2000 B Bonds shall be on a parity with each other.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2000 A Bond or a Series 2000 B Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project, and 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 with respect to such Bonds, any Registered Owner of a Series 2000 A Bond or a Series 2000 B 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 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 Series 2000 A Bonds and the Series 2000 B Bonds 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 Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or 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 exercise.

Whenever all that is due upon the Series 2000 A Bonds and the Series 2000 B Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or 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 Bond Legislation 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 or 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 Registered Owners of the Series 2000 A Bonds and the Series 2000 B 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 completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the 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 X

## PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2000 A Bonds and the Series 2000 B 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 Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2000 A Bonds and the Series 2000 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2000 A Bonds and the Series 2000 B Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2000 A Bonds and the Series 2000 B 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 Registered Owners of the Series 2000 A Bonds and the Series 2000 B Bonds shall be made without the consent in writing of the Registered Owners of the Series 2000 A Bonds and the Series 2000 B Bonds so affected and 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 respectively pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2000 A Bonds and the Series 2000 B Bonds, required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2000 A Bonds and the Series 2000 B Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. 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, the Supplemental Resolution, or the Series 2000 A Bonds and the Series 2000 B Bonds.

Section 11.04. 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 11.05. Notices. All notices to be sent to the Issuer, the Company, the Authority, the BPH or the Council shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

Boone County Public Service District
Post Office Box 287
Danville, West Virginia 25053
Attention: Chairman

COMPANY:

West Virginia-American Water Company
P. O. Box 1906
Charleston, West Virginia 25327-1906
Attention: President

AUTHORITY:

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

BPH:

West Virginia Bureau for Public Health
815 Quarrier Street, Suite 418
Charleston, West Virginia 25301
Attention: Environmental Engineering

COUNCIL:

West Virginia Infrastructure Council
980 One Valley Square
Charleston, West Virginia 25301
Attention: Executive Secretary

All notices to be sent to the Issuer hereunder shall also be sent to the Company, and all notices to be sent to the BPH or the Council hereunder, shall also be sent to the Authority.

Section 11.06. Conflicting Provisions Repealed. All orders or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 11.08. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this April 24, 2000.

Chairman Lyle Roy

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of BOONE COUNTY PUBLIC SERVICE DISTRICT on April 24, 2000.

Dated: April 26, 2000.

[SEAL]

Richard Browning
Secretary

04/11/00
091620/99001

EXHIBIT A

Loan Agreements included in bond transcript as Documents 3 and 4.

BOONE COUNTY PUBLIC SERVICE DISTRICT

Water Revenue Bonds,
Series 2000 A (West Virginia DWTRF Program) and
Series 2000 B (West Virginia Infrastructure Fund)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM) AND WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), OF BOONE COUNTY PUBLIC SERVICE DISTRICT; AUTHORIZING AND APPROVING THE LOAN AGREEMENTS RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING LETTERS OF CREDIT TO ADDITIONALLY SECURE THE BONDS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Boone County Public Service District (the "Issuer"), has duly and officially adopted a bond resolution, effective April 24, 2000 (the "Resolution") entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BOONE COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $2,130,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), AND NOT MORE THAN $4,909,161 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING

FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Resolution provides for the issuance of Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) and Series 2000 B (West Virginia Infrastructure Fund) of the Issuer (collectively, the "Bonds" and individually, the "Series 2000 A Bonds" and the "Series 2000 B Bonds"), in the respective aggregate principal amounts not to exceed $2,130,000 and $4,909,161, and has authorized the execution and delivery of the loan agreement relating to the Series 2000 A Bonds, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH") and the loan agreement relating to the Series 2000 B Bonds, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (collectively, the "Loan Agreement), all in accordance with Chapter 16, Article 13A, Chapter 16, Article 13C and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Resolution it is provided that the form of the Loan Agreement and the exact principal amounts, dates, maturity dates, redemption provisions, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Issuer has determined it desirable to purchase from One Valley Bank, National Association, Charleston, West Virginia, and the Company has agreed to pay for such purchase, a Letter of Credit, No. 00-027, dated April 26, 2000, in the amount of $142,000 (the "Series 2000 A Letter of Credit"), and a Letter of Credit, No. 00-025, dated April 26, 2000, in the amount of $253,377 (the "Series 2000 B Letter of Credit" and, collectively with the Series 2000 A Letter of Credit, the "Letter of Credit") to fund the respective Reserve Accounts for the Bonds;

WHEREAS, the Loan Agreement and the Letter of Credit have been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and entered into by the Issuer, that the Letter of Credit be approved, that the exact principal amounts, the dates, the maturity dates, the redemption provisions, the interest rates, the interest and principal payment dates and the sale prices of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF BOONE COUNTY PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer:

A. The Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $2,130,000. The Series 2000 A Bonds shall be dated the date of delivery thereof, shall finally mature June 1, 2031, and shall bear no interest. The principal of the Series 2000 A Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2001, and ending June 1, 2031, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2000 A Bonds. The Series 2000 A Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2000 A Bonds. The Issuer does hereby approve and shall pay the Administrative Fee equal to 1% of the principal amount of the Series 2000 A Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

B. The Water Revenue Bonds, Series 2000 B (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of $4,909,161. The Series 2000 B Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2040, and shall bear no interest. The

principal of the Series 2000 B Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2001, and ending March 1, 2040, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2000 B Bonds. The Series 2000 B Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2000 B Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Resolution.

Section 3. The Issuer does hereby authorize, ratify, approve and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the BPH, the Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon; provided that, the proceeds of the Bonds will be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby approve the Letter of Credit and the issuance of the Letter of Credit to fund the respective Reserve Accounts for the Bonds, and hereby agrees that the Authority may hereafter require that the Reserve Accounts be funded in the amounts required under the Resolution and the Loan Agreement in the event the Letter of Credit is reduced or terminated.

Section 5. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Resolution and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

Section 6. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Resolution.

Section 7. The Issuer does hereby appoint and designate Boone County Bank, Inc., Madison, West Virginia, to serve as Depository Bank under the Resolution.

Section 8. Series 2000 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2000 A Bonds Sinking Fund as capitalized interest.

Section 9. Series 2000 B Bonds proceeds in the amount of $-0- shall be deposited in the Series 2000 B Bonds Sinking Fund as capitalized interest.

Section 10. Series 2000 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2000 A Bonds Reserve Account. The Series 2000 A Bonds Reserve Account shall be funded with the Series 2000 A Letter of Credit in the stated amount of $142,000.

Section 11. Series 2000 B Bonds proceeds in the amount of $-0- shall be deposited in the Series 2000 B Bonds Reserve Account. The Series 2000 B Bonds Reserve Account shall be funded with the Series 2000 B Letter of Credit in the stated amount of $253,377.

Section 12. The balance of the proceeds of the Series 2000 A Bonds and the Series 2000 B Bonds shall be deposited in or credited to the Series 2000 Bonds Construction Trust Fund as received from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Series 2000 A Bonds and the Series 2000 B Bonds and related costs.

Section 13. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds hereby and by the Resolution approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about April 26, 2000.

Section 14. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 15. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Resolution held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts, until further directed by the Issuer. Moneys in the Sinking Funds shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 24th day of April, 2000.

Chairman Lyle Roy

8

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of BOONE COUNTY PUBLIC SERVICE DISTRICT on the 24th day of April, 2000.

Dated: April 26, 2000.

[SEAL]

Richard Browning
Secretary

04/19/00
091620/99001

# SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2000 A
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1 $2,130,000

KNOW ALL MEN BY THESE PRESENTS: That BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Boone County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of TWO MILLION ONE HUNDRED THIRTY THOUSAND DOLLARS ($2,130,000), 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 as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2001, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The Administrative Fee (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2001, as set forth on EXHIBIT B attached hereto.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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").

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 Bureau for Public Health (the "BPH") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated April 17, 2000.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." 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 16, Article 13C of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Resolution duly adopted by the Issuer on April 24, 2000, and a Supplemental Resolution duly adopted by the Issuer on April 24, 2000 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2000 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED APRIL 26, 2000, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,909,161 (THE "SERIES 2000 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2000 B Bonds, unexpended proceeds of the Bonds and proceeds of the Letter of Credit (as defined in the Bond Legislation). Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, unexpended proceeds of the Bonds and proceeds of the Letter of Credit. Pursuant to the Bond Legislation and as long as the Agreement (as defined in the Bond Legislation) is in effect, 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 100% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2000 B Bonds. In the event the Agreement is no longer in effect, the Issuer has covenanted and agreed to adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and the Loan Agreement. In the event the Letter of Credit is terminated or reduced, the Issuer has covenanted and agreed to fund the Series 2000 A Bonds Reserve Account in the amounts required under the Bond Legislation and the Loan Agreement. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the

registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the 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 amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, BOONE COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated April 26, 2000.

[SEAL]

Chairman

SPECIMEN

ATTEST:

Secretary

SPECIMEN

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: April 26, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION, as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| | AMOUNT | DATE | | AMOUNT | DATE |
|---|---|---|---|---|---|
| (1) | $53,250 | 04/26/00 | (19) | $ | |
| (2) | $ | | (20) | $ | |
| (3) | $ | | (21) | $ | |
| (4) | $ | | (22) | $ | |
| (5) | $ | | (23) | $ | |
| (6) | $ | | (24) | $ | |
| (7) | $ | | (25) | $ | |
| (8) | $ | | (26) | $ | |
| (9) | $ | | (27) | $ | |
| (10) | $ | | (28) | $ | |
| (11) | $ | | (29) | $ | |
| (12) | $ | | (30) | $ | |
| (13) | $ | | (31) | $ | |
| (14) | $ | | (32) | $ | |
| (15) | $ | | (33) | $ | |
| (16) | $ | | (34) | $ | |
| (17) | $ | | (35) | $ | |
| (18) | $ | | (36) | $ | |

TOTAL $

**EXHIBIT B**

## Boone County Public Service District (West Virginia)

*DWTRF Loan of $2,130,000*
*30 Years, 0% Interest Rate, 1% Administrative Fee*
*Closing Date: April 26, 2000*

### DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 6/01/2000 | - | - | - |
| 9/01/2000 | - | - | - |
| 12/01/2000 | - | - | - |
| 3/01/2001 | - | - | - |
| 6/01/2001 | - | - | - |
| 9/01/2001 | 17,750.00 | - | 17,750.00 |
| 12/01/2001 | 17,750.00 | - | 17,750.00 |
| 3/01/2002 | 17,750.00 | - | 17,750.00 |
| 6/01/2002 | 17,750.00 | - | 17,750.00 |
| 9/01/2002 | 17,750.00 | - | 17,750.00 |
| 12/01/2002 | 17,750.00 | - | 17,750.00 |
| 3/01/2003 | 17,750.00 | - | 17,750.00 |
| 6/01/2003 | 17,750.00 | - | 17,750.00 |
| 9/01/2003 | 17,750.00 | - | 17,750.00 |
| 12/01/2003 | 17,750.00 | - | 17,750.00 |
| 3/01/2004 | 17,750.00 | - | 17,750.00 |
| 6/01/2004 | 17,750.00 | - | 17,750.00 |
| 9/01/2004 | 17,750.00 | - | 17,750.00 |
| 12/01/2004 | 17,750.00 | - | 17,750.00 |
| 3/01/2005 | 17,750.00 | - | 17,750.00 |
| 6/01/2005 | 17,750.00 | - | 17,750.00 |
| 9/01/2005 | 17,750.00 | - | 17,750.00 |
| 12/01/2005 | 17,750.00 | - | 17,750.00 |
| 3/01/2006 | 17,750.00 | - | 17,750.00 |
| 6/01/2006 | 17,750.00 | - | 17,750.00 |
| 9/01/2006 | 17,750.00 | - | 17,750.00 |
| 12/01/2006 | 17,750.00 | - | 17,750.00 |
| 3/01/2007 | 17,750.00 | - | 17,750.00 |
| 6/01/2007 | 17,750.00 | - | 17,750.00 |
| 9/01/2007 | 17,750.00 | - | 17,750.00 |
| 12/01/2007 | 17,750.00 | - | 17,750.00 |
| 3/01/2008 | 17,750.00 | - | 17,750.00 |
| 6/01/2008 | 17,750.00 | - | 17,750.00 |
| 9/01/2008 | 17,750.00 | - | 17,750.00 |
| 12/01/2008 | 17,750.00 | - | 17,750.00 |
| 3/01/2009 | 17,750.00 | - | 17,750.00 |
| 6/01/2009 | 17,750.00 | - | 17,750.00 |
| 9/01/2009 | 17,750.00 | - | 17,750.00 |
| 12/01/2009 | 17,750.00 | - | 17,750.00 |
| 3/01/2010 | 17,750.00 | - | 17,750.00 |
| 6/01/2010 | 17,750.00 | - | 17,750.00 |
| 9/01/2010 | 17,750.00 | - | 17,750.00 |
| 12/01/2010 | 17,750.00 | - | 17,750.00 |
| 3/01/2011 | 17,750.00 | - | 17,750.00 |
| 6/01/2011 | 17,750.00 | - | 17,750.00 |
| 9/01/2011 | 17,750.00 | - | 17,750.00 |

## Boone County Public Service District (West Virginia)

*DWTRF Loan of $2,130,000*
*30 Years, 0% Interest Rate, 1% Administrative Fee*
*Closing Date: April 26, 2000*

### DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 12/01/2011 | 17,750.00 | - | 17,750.00 |
| 3/01/2012 | 17,750.00 | - | 17,750.00 |
| 6/01/2012 | 17,750.00 | - | 17,750.00 |
| 9/01/2012 | 17,750.00 | - | 17,750.00 |
| 12/01/2012 | 17,750.00 | - | 17,750.00 |
| 3/01/2013 | 17,750.00 | - | 17,750.00 |
| 6/01/2013 | 17,750.00 | - | 17,750.00 |
| 9/01/2013 | 17,750.00 | - | 17,750.00 |
| 12/01/2013 | 17,750.00 | - | 17,750.00 |
| 3/01/2014 | 17,750.00 | - | 17,750.00 |
| 6/01/2014 | 17,750.00 | - | 17,750.00 |
| 9/01/2014 | 17,750.00 | - | 17,750.00 |
| 12/01/2014 | 17,750.00 | - | 17,750.00 |
| 3/01/2015 | 17,750.00 | - | 17,750.00 |
| 6/01/2015 | 17,750.00 | - | 17,750.00 |
| 9/01/2015 | 17,750.00 | - | 17,750.00 |
| 12/01/2015 | 17,750.00 | - | 17,750.00 |
| 3/01/2016 | 17,750.00 | - | 17,750.00 |
| 6/01/2016 | 17,750.00 | - | 17,750.00 |
| 9/01/2016 | 17,750.00 | - | 17,750.00 |
| 12/01/2016 | 17,750.00 | - | 17,750.00 |
| 3/01/2017 | 17,750.00 | - | 17,750.00 |
| 6/01/2017 | 17,750.00 | - | 17,750.00 |
| 9/01/2017 | 17,750.00 | - | 17,750.00 |
| 12/01/2017 | 17,750.00 | - | 17,750.00 |
| 3/01/2018 | 17,750.00 | - | 17,750.00 |
| 6/01/2018 | 17,750.00 | - | 17,750.00 |
| 9/01/2018 | 17,750.00 | - | 17,750.00 |
| 12/01/2018 | 17,750.00 | - | 17,750.00 |
| 3/01/2019 | 17,750.00 | - | 17,750.00 |
| 6/01/2019 | 17,750.00 | - | 17,750.00 |
| 9/01/2019 | 17,750.00 | - | 17,750.00 |
| 12/01/2019 | 17,750.00 | - | 17,750.00 |
| 3/01/2020 | 17,750.00 | - | 17,750.00 |
| 6/01/2020 | 17,750.00 | - | 17,750.00 |
| 9/01/2020 | 17,750.00 | - | 17,750.00 |
| 12/01/2020 | 17,750.00 | - | 17,750.00 |
| 3/01/2021 | 17,750.00 | - | 17,750.00 |
| 6/01/2021 | 17,750.00 | - | 17,750.00 |
| 9/01/2021 | 17,750.00 | - | 17,750.00 |
| 12/01/2021 | 17,750.00 | - | 17,750.00 |
| 3/01/2022 | 17,750.00 | - | 17,750.00 |
| 6/01/2022 | 17,750.00 | - | 17,750.00 |
| 9/01/2022 | 17,750.00 | - | 17,750.00 |
| 12/01/2022 | 17,750.00 | - | 17,750.00 |
| 3/01/2023 | 17,750.00 | - | 17,750.00 |

## Boone County Public Service District (West Virginia)

*DWTRF Loan of $2,130,000*
*30 Years, 0% Interest Rate, 1% Administrative Fee*
*Closing Date: April 26, 2000*

### DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 6/01/2023 | 17,750.00 | - | 17,750.00 |
| 9/01/2023 | 17,750.00 | - | 17,750.00 |
| 12/01/2023 | 17,750.00 | - | 17,750.00 |
| 3/01/2024 | 17,750.00 | - | 17,750.00 |
| 6/01/2024 | 17,750.00 | - | 17,750.00 |
| 9/01/2024 | 17,750.00 | - | 17,750.00 |
| 12/01/2024 | 17,750.00 | - | 17,750.00 |
| 3/01/2025 | 17,750.00 | - | 17,750.00 |
| 6/01/2025 | 17,750.00 | - | 17,750.00 |
| 9/01/2025 | 17,750.00 | - | 17,750.00 |
| 12/01/2025 | 17,750.00 | - | 17,750.00 |
| 3/01/2026 | 17,750.00 | - | 17,750.00 |
| 6/01/2026 | 17,750.00 | - | 17,750.00 |
| 9/01/2026 | 17,750.00 | - | 17,750.00 |
| 12/01/2026 | 17,750.00 | - | 17,750.00 |
| 3/01/2027 | 17,750.00 | - | 17,750.00 |
| 6/01/2027 | 17,750.00 | - | 17,750.00 |
| 9/01/2027 | 17,750.00 | - | 17,750.00 |
| 12/01/2027 | 17,750.00 | - | 17,750.00 |
| 3/01/2028 | 17,750.00 | - | 17,750.00 |
| 6/01/2028 | 17,750.00 | - | 17,750.00 |
| 9/01/2028 | 17,750.00 | - | 17,750.00 |
| 12/01/2028 | 17,750.00 | - | 17,750.00 |
| 3/01/2029 | 17,750.00 | - | 17,750.00 |
| 6/01/2029 | 17,750.00 | - | 17,750.00 |
| 9/01/2029 | 17,750.00 | - | 17,750.00 |
| 12/01/2029 | 17,750.00 | - | 17,750.00 |
| 3/01/2030 | 17,750.00 | - | 17,750.00 |
| 6/01/2030 | 17,750.00 | - | 17,750.00 |
| 9/01/2030 | 17,750.00 | - | 17,750.00 |
| 12/01/2030 | 17,750.00 | - | 17,750.00 |
| 3/01/2031 | 17,750.00 | - | 17,750.00 |
| 6/01/2031 | 17,750.00 | - | 17,750.00 |
| Total | 2,130,000.00 | - | 2,130,000.00 * |

*Plus one-percent administrative fee of $2,684.69 paid quarterly. The total fee paid over the life of the loan is $322,162.80.

# Boone County Public Service District (West Virginia)

*DWTRF Loan of $2,130,000*
*30 Years, 0% Interest Rate, 1% Administrative Fee*
*Closing Date: April 26, 2000*

## DEBT SERVICE SCHEDULE

### YIELD STATISTICS

| | |
|---|---|
| Bond Year Dollars | $34,553.33 |
| Average Life | 16.222 Years |
| Average Coupon | - |
| Net Interest Cost (NIC) | - |
| True Interest Cost (TIC) | 2.22E-12 |
| Bond Yield for Arbitrage Purposes | 2.22E-12 |
| All Inclusive Cost (AIC) | 0.9271361% |

### IRS FORM 8038

| | |
|---|---|
| Net Interest Cost | - |
| Weighted Average Maturity | 16.222 Years |

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

04/18/00
091620/99001

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
BOONE COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2000 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1 $4,909,161

KNOW ALL MEN BY THESE PRESENTS: That BOONE COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Boone County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of FOUR MILLION NINE HUNDRED NINE THOUSAND ONE HUNDRED SIXTY ONE DOLLARS ($4,909,161), 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 as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2001, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, 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").

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 by and between the Issuer and the Authority, on behalf of the Council, dated April 17, 2000.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." 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 (the

"Act"), and a Bond Resolution duly adopted by the Issuer on April 24, 2000, and a Supplemental Resolution duly adopted by the Issuer on April 24, 2000 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), DATED APRIL 26, 2000, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,130,000 (THE "SERIES 2000 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2000 A Bonds, unexpended proceeds of the Bonds and proceeds of the Letter of Credit (as defined in the Bond Legislation). Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, unexpended proceeds of the Bonds and proceeds of the Letter of Credit. Pursuant to the Bond Legislation and as long as the Agreement (as defined in the Bond Legislation) is in effect, 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 100% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 2000 A Bonds. In the event the Agreement is no longer in effect, the Issuer has covenanted and agreed to adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and the Loan Agreement. In the event the Letter of Credit is terminated or reduced, the Issuer has covenanted and agreed to fund the Series 2000 B Bonds Reserve Account in the amounts required under the Bond Legislation and the Loan Agreement. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof 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.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the 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 amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

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

IN WITNESS WHEREOF, BOONE COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated April 26, 2000.

[SEAL]

SPECIMEN

Chairman

ATTEST:

SPECIMEN

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: April 26, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION, as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| | AMOUNT | DATE | | AMOUNT | DATE |
|---|---|---|---|---|---|
| (1) | $22,212 | 04/26/00 | (19) | $ | |
| (2) | $ | | (20) | $ | |
| (3) | $ | | (21) | $ | |
| (4) | $ | | (22) | $ | |
| (5) | $ | | (23) | $ | |
| (6) | $ | | (24) | $ | |
| (7) | $ | | (25) | $ | |
| (8) | $ | | (26) | $ | |
| (9) | $ | | (27) | $ | |
| (10) | $ | | (28) | $ | |
| (11) | $ | | (29) | $ | |
| (12) | $ | | (30) | $ | |
| (13) | $ | | (31) | $ | |
| (14) | $ | | (32) | $ | |
| (15) | $ | | (33) | $ | |
| (16) | $ | | (34) | $ | |
| (17) | $ | | (35) | $ | |
| (18) | $ | | (36) | $ | |

TOTAL $

EXHIBIT B

## Boone County Public Service District (West Virginia)

*Loan of $4,909,161*
*40 Years, 0% Interest Rate*
*Closing Date: April 26, 2000*

### DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 6/01/2000 | - | - | - |
| 9/01/2000 | - | - | - |
| 12/01/2000 | - | - | - |
| 3/01/2001 | - | - | - |
| 6/01/2001 | - | - | - |
| 9/01/2001 | 31,673.00 | - | 31,673.00 |
| 12/01/2001 | 31,672.00 | - | 31,672.00 |
| 3/01/2002 | 31,672.00 | - | 31,672.00 |
| 6/01/2002 | 31,672.00 | - | 31,672.00 |
| 9/01/2002 | 31,672.00 | - | 31,672.00 |
| 12/01/2002 | 31,672.00 | - | 31,672.00 |
| 3/01/2003 | 31,672.00 | - | 31,672.00 |
| 6/01/2003 | 31,672.00 | - | 31,672.00 |
| 9/01/2003 | 31,672.00 | - | 31,672.00 |
| 12/01/2003 | 31,672.00 | - | 31,672.00 |
| 3/01/2004 | 31,672.00 | - | 31,672.00 |
| 6/01/2004 | 31,672.00 | - | 31,672.00 |
| 9/01/2004 | 31,672.00 | - | 31,672.00 |
| 12/01/2004 | 31,672.00 | - | 31,672.00 |
| 3/01/2005 | 31,672.00 | - | 31,672.00 |
| 6/01/2005 | 31,672.00 | - | 31,672.00 |
| 9/01/2005 | 31,672.00 | - | 31,672.00 |
| 12/01/2005 | 31,672.00 | - | 31,672.00 |
| 3/01/2006 | 31,672.00 | - | 31,672.00 |
| 6/01/2006 | 31,672.00 | - | 31,672.00 |
| 9/01/2006 | 31,672.00 | - | 31,672.00 |
| 12/01/2006 | 31,672.00 | - | 31,672.00 |
| 3/01/2007 | 31,672.00 | - | 31,672.00 |
| 6/01/2007 | 31,672.00 | - | 31,672.00 |
| 9/01/2007 | 31,672.00 | - | 31,672.00 |
| 12/01/2007 | 31,672.00 | - | 31,672.00 |
| 3/01/2008 | 31,672.00 | - | 31,672.00 |
| 6/01/2008 | 31,672.00 | - | 31,672.00 |
| 9/01/2008 | 31,672.00 | - | 31,672.00 |
| 12/01/2008 | 31,672.00 | - | 31,672.00 |
| 3/01/2009 | 31,672.00 | - | 31,672.00 |
| 6/01/2009 | 31,672.00 | - | 31,672.00 |
| 9/01/2009 | 31,672.00 | - | 31,672.00 |
| 12/01/2009 | 31,672.00 | - | 31,672.00 |
| 3/01/2010 | 31,672.00 | - | 31,672.00 |
| 6/01/2010 | 31,672.00 | - | 31,672.00 |
| 9/01/2010 | 31,672.00 | - | 31,672.00 |
| 12/01/2010 | 31,672.00 | - | 31,672.00 |
| 3/01/2011 | 31,672.00 | - | 31,672.00 |
| 6/01/2011 | 31,672.00 | - | 31,672.00 |
| 9/01/2011 | 31,672.00 | - | 31,672.00 |

# Boone County Public Service District (West Virginia)

*Loan of $4,909,161*
*40 Years, 0% Interest Rate*
*Closing Date: April 26, 2000*

## DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 12/01/2011 | 31,672.00 | - | 31,672.00 |
| 3/01/2012 | 31,672.00 | - | 31,672.00 |
| 6/01/2012 | 31,672.00 | - | 31,672.00 |
| 9/01/2012 | 31,672.00 | - | 31,672.00 |
| 12/01/2012 | 31,672.00 | - | 31,672.00 |
| 3/01/2013 | 31,672.00 | - | 31,672.00 |
| 6/01/2013 | 31,672.00 | - | 31,672.00 |
| 9/01/2013 | 31,672.00 | - | 31,672.00 |
| 12/01/2013 | 31,672.00 | - | 31,672.00 |
| 3/01/2014 | 31,672.00 | - | 31,672.00 |
| 6/01/2014 | 31,672.00 | - | 31,672.00 |
| 9/01/2014 | 31,672.00 | - | 31,672.00 |
| 12/01/2014 | 31,672.00 | - | 31,672.00 |
| 3/01/2015 | 31,672.00 | - | 31,672.00 |
| 6/01/2015 | 31,672.00 | - | 31,672.00 |
| 9/01/2015 | 31,672.00 | - | 31,672.00 |
| 12/01/2015 | 31,672.00 | - | 31,672.00 |
| 3/01/2016 | 31,672.00 | - | 31,672.00 |
| 6/01/2016 | 31,672.00 | - | 31,672.00 |
| 9/01/2016 | 31,672.00 | - | 31,672.00 |
| 12/01/2016 | 31,672.00 | - | 31,672.00 |
| 3/01/2017 | 31,672.00 | - | 31,672.00 |
| 6/01/2017 | 31,672.00 | - | 31,672.00 |
| 9/01/2017 | 31,672.00 | - | 31,672.00 |
| 12/01/2017 | 31,672.00 | - | 31,672.00 |
| 3/01/2018 | 31,672.00 | - | 31,672.00 |
| 6/01/2018 | 31,672.00 | - | 31,672.00 |
| 9/01/2018 | 31,672.00 | - | 31,672.00 |
| 12/01/2018 | 31,672.00 | - | 31,672.00 |
| 3/01/2019 | 31,672.00 | - | 31,672.00 |
| 6/01/2019 | 31,672.00 | - | 31,672.00 |
| 9/01/2019 | 31,672.00 | - | 31,672.00 |
| 12/01/2019 | 31,672.00 | - | 31,672.00 |
| 3/01/2020 | 31,672.00 | - | 31,672.00 |
| 6/01/2020 | 31,672.00 | - | 31,672.00 |
| 9/01/2020 | 31,672.00 | - | 31,672.00 |
| 12/01/2020 | 31,672.00 | - | 31,672.00 |
| 3/01/2021 | 31,672.00 | - | 31,672.00 |
| 6/01/2021 | 31,672.00 | - | 31,672.00 |
| 9/01/2021 | 31,672.00 | - | 31,672.00 |
| 12/01/2021 | 31,672.00 | - | 31,672.00 |
| 3/01/2022 | 31,672.00 | - | 31,672.00 |
| 6/01/2022 | 31,672.00 | - | 31,672.00 |
| 9/01/2022 | 31,672.00 | - | 31,672.00 |
| 12/01/2022 | 31,672.00 | - | 31,672.00 |
| 3/01/2023 | 31,672.00 | - | 31,672.00 |

# Boone County Public Service District (West Virginia)

*Loan of $4,909,161*
*40 Years, 0% Interest Rate*
*Closing Date: April 26, 2000*

## DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 6/01/2023 | 31,672.00 | - | 31,672.00 |
| 9/01/2023 | 31,672.00 | - | 31,672.00 |
| 12/01/2023 | 31,672.00 | - | 31,672.00 |
| 3/01/2024 | 31,672.00 | - | 31,672.00 |
| 6/01/2024 | 31,672.00 | - | 31,672.00 |
| 9/01/2024 | 31,672.00 | - | 31,672.00 |
| 12/01/2024 | 31,672.00 | - | 31,672.00 |
| 3/01/2025 | 31,672.00 | - | 31,672.00 |
| 6/01/2025 | 31,672.00 | - | 31,672.00 |
| 9/01/2025 | 31,672.00 | - | 31,672.00 |
| 12/01/2025 | 31,672.00 | - | 31,672.00 |
| 3/01/2026 | 31,672.00 | - | 31,672.00 |
| 6/01/2026 | 31,672.00 | - | 31,672.00 |
| 9/01/2026 | 31,672.00 | - | 31,672.00 |
| 12/01/2026 | 31,672.00 | - | 31,672.00 |
| 3/01/2027 | 31,672.00 | - | 31,672.00 |
| 6/01/2027 | 31,672.00 | - | 31,672.00 |
| 9/01/2027 | 31,672.00 | - | 31,672.00 |
| 12/01/2027 | 31,672.00 | - | 31,672.00 |
| 3/01/2028 | 31,672.00 | - | 31,672.00 |
| 6/01/2028 | 31,672.00 | - | 31,672.00 |
| 9/01/2028 | 31,672.00 | - | 31,672.00 |
| 12/01/2028 | 31,672.00 | - | 31,672.00 |
| 3/01/2029 | 31,672.00 | - | 31,672.00 |
| 6/01/2029 | 31,672.00 | - | 31,672.00 |
| 9/01/2029 | 31,672.00 | - | 31,672.00 |
| 12/01/2029 | 31,672.00 | - | 31,672.00 |
| 3/01/2030 | 31,672.00 | - | 31,672.00 |
| 6/01/2030 | 31,672.00 | - | 31,672.00 |
| 9/01/2030 | 31,672.00 | - | 31,672.00 |
| 12/01/2030 | 31,672.00 | - | 31,672.00 |
| 3/01/2031 | 31,672.00 | - | 31,672.00 |
| 6/01/2031 | 31,672.00 | - | 31,672.00 |
| 9/01/2031 | 31,672.00 | - | 31,672.00 |
| 12/01/2031 | 31,672.00 | - | 31,672.00 |
| 3/01/2032 | 31,672.00 | - | 31,672.00 |
| 6/01/2032 | 31,672.00 | - | 31,672.00 |
| 9/01/2032 | 31,672.00 | - | 31,672.00 |
| 12/01/2032 | 31,672.00 | - | 31,672.00 |
| 3/01/2033 | 31,672.00 | - | 31,672.00 |
| 6/01/2033 | 31,672.00 | - | 31,672.00 |
| 9/01/2033 | 31,672.00 | - | 31,672.00 |
| 12/01/2033 | 31,672.00 | - | 31,672.00 |
| 3/01/2034 | 31,672.00 | - | 31,672.00 |
| 6/01/2034 | 31,672.00 | - | 31,672.00 |
| 9/01/2034 | 31,672.00 | - | 31,672.00 |

# Boone County Public Service District (West Virginia)

*Loan of $4,909,161*
*40 Years, 0% Interest Rate*
*Closing Date: April 26, 2000*

## DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Total P+I |
|---|---|---|---|
| 12/01/2034 | 31,672.00 | - | 31,672.00 |
| 3/01/2035 | 31,672.00 | - | 31,672.00 |
| 6/01/2035 | 31,672.00 | - | 31,672.00 |
| 9/01/2035 | 31,672.00 | - | 31,672.00 |
| 12/01/2035 | 31,672.00 | - | 31,672.00 |
| 3/01/2036 | 31,672.00 | - | 31,672.00 |
| 6/01/2036 | 31,672.00 | - | 31,672.00 |
| 9/01/2036 | 31,672.00 | - | 31,672.00 |
| 12/01/2036 | 31,672.00 | - | 31,672.00 |
| 3/01/2037 | 31,672.00 | - | 31,672.00 |
| 6/01/2037 | 31,672.00 | - | 31,672.00 |
| 9/01/2037 | 31,672.00 | - | 31,672.00 |
| 12/01/2037 | 31,672.00 | - | 31,672.00 |
| 3/01/2038 | 31,672.00 | - | 31,672.00 |
| 6/01/2038 | 31,672.00 | - | 31,672.00 |
| 9/01/2038 | 31,672.00 | - | 31,672.00 |
| 12/01/2038 | 31,672.00 | - | 31,672.00 |
| 3/01/2039 | 31,672.00 | - | 31,672.00 |
| 6/01/2039 | 31,672.00 | - | 31,672.00 |
| 9/01/2039 | 31,672.00 | - | 31,672.00 |
| 12/01/2039 | 31,672.00 | - | 31,672.00 |
| 3/01/2040 | 31,672.00 | - | 31,672.00 |
| Total | 4,909,161.00 | - | 4,909,161.00 |

### YIELD STATISTICS

| | |
|---|---|
| Bond Year Dollars | $101,115.06 |
| Average Life | 20.597 Years |
| Average Coupon | - |
| Net Interest Cost (NIC) | - |
| True Interest Cost (TIC) | 8.70E-11 |
| Bond Yield for Arbitrage Purposes | 8.70E-11 |
| All Inclusive Cost (AIC) | 8.70E-11 |

### IRS FORM 8038

| | |
|---|---|
| Net Interest Cost | - |
| Weighted Average Maturity | 20.597 Years |

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

04/24/00
091620/99001