

**BUFFALO CREEK PUBLIC SERVICE DISTRICT**

**\$1,797,894 Sewerage System Revenue Bonds,  
Series 1998 A**

**CLOSING DATE: October 22, 1998**

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TRANSCRIPT OF PROCEEDINGS

CLOSING DATE: October 22, 1998

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The closing of the sale of Buffalo Creek Public Service District Sewer Revenue Bonds, Series 1998 A, to the Authority will take place at the offices of the District in Amherstdale, West Virginia, at 10:00 a.m. prevailing time on Thursday, October 22, 1998. No document shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered.

CHASFS3:127126



# State of West Virginia



## Certificate

*I, Ken Hechler, Secretary of State of the  
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16 ARTICLE 13A OF THE WEST VIRGINIA  
CODE AS INDICATED BY THE RECORDS OF THIS OFFICE.**



*Given under my hand and the  
Great Seal of the State of  
West Virginia on this  
Twenty-first day of  
October 19 98*

*Ken Hechler*

*Secretary of State*

compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

**Applied in** *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-24. **Article to be construed liberally.**

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

**Quoted in** *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

ARTICLE 13A.

**PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.**

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- 16-13A-1a. Jurisdiction of the public service commission.
- 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
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- Sec. 16-13A-23. Validation of acts and proceedings of public service boards.
- 16-13A-24. Acceptance of loans, grants or temporary advances.
- 16-13A-25. Borrowing and bond issuance; procedure.

**Editor's notes.** — Acts 1989, 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225.

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**Constitutionality.** — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts, payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States, State

ex rel. *McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Purpose.** — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. State ex rel. *McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1983, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. State ex rel. *McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Public utilities.** — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Atty Gen. 447 (1963).

**Cited in** *Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987); *McClung Invs. Inc. v. Green Valley Community Pub. Serv. Dist.*, 485 S.E.2d 434 (W. Va. 1997).

§ 16-13A-1. **Legislative findings.**

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best

interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)

**Authority of county commissions.** — The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provisions of this article. Op. Atty. Gen., June 27, 1973.

**Public service district — Authority.** — A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa, 162 W. Va. 779, 253 S.E.2d 54 (1979).

Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).  
**Public service district — Purpose.** — The purpose for the creation of a public service district may be ascertained by a review of the order establishing the district and the history behind the creation of the district (the notice of hearing and hearings held prior to the creation of the district). Op. Atty. Gen., July 8, 1976.

**Cited in State ex rel. APCO v. Gainer.** 149 W. Va. 740, 143 S.E.2d 351 (1965); *Shobe v. Latimer*, 162 W. Va. 779, 253 S.E.2d 54 (1979).

**§ 16-13A-1a. Jurisdiction of the public service commission.**

The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:

- (a) To study, modify, approve, deny or amend the plans created under section one-b [§ 16-13A-1b] of this article for consolidation or merger of public service districts and their facilities, personnel or administration;
- (b) To petition the appropriate circuit court for the removal of a public service district board member or members; and
- (c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters. (1986, c. 81.)

*Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist.*, 195 W. Va. 135, 464 S.E.2d 777 (1995).

**§ 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.**

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative

services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

**§ 16-13A-1c. General purpose of districts.**

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

**§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.**

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) on its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three of § 59-3-1 et seq., chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or

consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b] of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated

pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125.)

**Editor's notes.** — Concerning the reference in (a) to "the effective date of this section," this language was added by Acts 1986, c. 81, which passed March 8, 1986, and became effective ninety days from passage.

**Textbooks.** — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (McKie).

**Constitutionality.** — There is no unlawful delegation of legislative power to the county courts (now county commissions) of this State under this section in violation of W. Va. Const., art. V, § 1, and art. VI, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

There is no unconstitutional delegation of judicial functions to the county court (now county commission) made by this section. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Authority of commission and voters.** — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlargement or reduction of such public service district, which action is not subject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and public referendum depending upon the number of qualified voters who protest such action. Op. Atty Gen., Nov. 13, 1975.

**Authority of court.** — A county court (now county commission) has authority to add sewerage services to the facilities of a public service district which was created for the purpose of furnishing water services, under appropriate

proceedings. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Compliance.** — The provisions of this section relating to the filing of the petition or motion of the county court (now county commission) the description of the territory to be embraced and like provisions are mandatory, but the use of the word "shall," in relation to the requirements for the posting and publication of notice and the time of setting of the hearing are directory and require only substantial compliance. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Merger or consolidation of districts.** — This section authorizes either merger or consolidation of public service districts. Op. Atty Gen., June 12, 1985, No. 9.

A merger or consolidation results in one corporation which, in the case of merger, will be the corporation designated by the commissioners as the surviving corporation, and with respect to a consolidation, will be a new corporate entity. Op. Atty Gen., June 12, 1985, No. 9.

**Overlapping districts.** — Where there is no bond indebtedness outstanding to be paid by a public service district, the county commission creating a public service district may under take to enlarge or reduce the areas of various overlapping districts or may even consolidate the overlapping districts into one district. Op. Atty Gen., July 8, 1976.

**Public corporation.** — A public service district is a public corporation and does not come within the constitutional inhibition requiring all corporations to be created by general law. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Referendum.** — There is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service district should be continued or abolished. 52 Op. Atty Gen. 33 (1966). "Shall apply with like effect," etc.

Because a protest against creation (triggers a referendum) the language "shall apply with like effect as if a district were being created" can mean only that a protest against enlargement or reduction likewise triggers a referendum. Op. Atty Gen., Nov. 13, 1975.

Cited in State v. Neary, 179 W. Va. 115, 365 S.E.2d 395 (1987).

**§ 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.**

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the

resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the state of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating

the district as soon as practicable after the appointments and shall qualify by taking an oath of office. Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159.)

**Effect of amendment of 1997.** — The amendment, in the third and fourth paragraphs, added "except in cases of merger or consolidation where the number of board members may equal five" at the end; in the fourth paragraph, inserted "and residing within the state of West Virginia" following "who are persons residing within the district"; in the fifth paragraph, inserted "except in the cases of merger or consolidation where the number of board members may equal five" in the middle of the paragraph; in the seventh paragraph, added the third sentence; in the ninth paragraph, added the third and fourth sentences; and made stylistic changes.

**Textbooks.** — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Michie).

**W. Va. Law Review.** — Fisher. "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?" 98 W. Va. L. Rev. 449 (1996).

**Authority of districts.** — Public service districts are agents of the county commission by which they were created, having no authority other than that expressly set out in this article. Op. Att'y Gen., July 8, 1976.

**Compensation for additional duties.** — Board members of a public service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

**Exemptions.** — Public service districts of West Virginia are political subdivisions of the State, and as such, they are specifically, by

express statute, exempted from the duty of public service district may furnish water whole-paying registration fees (provided by § 17A-10-8), the privilege tax (imposed by § 17A-3-4), and the certificate of title charge (required by § 17A-3-4). 49 Op. Att'y Gen. 131 (1961).

**Furnishing water to another state.** — A. Cited in State v. Neary, 179 W. Va. 115, 365 S.E.2d 395 (1987).

**§ 16-13A-3a. Removal of members of public service board.**

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs, associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal. (1963, c. 75; 1971, c. 72; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Michie).

**Quoted in State v. Neary.** 179 W. Va. 115, 365 S.E.2d 395 (1987).

**§ 16-13A-4. Board chairman; members' compensation; procedure; district name.**

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member may receive seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member may receive one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per

attendance at additional special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum; for districts with two thousand customers or more, each board member may receive one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and for districts with four thousand or more customers, each board member may receive one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum. The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided by said section. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81; 1997, c. 159.)

**Effect of amendment of 1997.** — The amendment rewrote the second sentence in the fourth sentence, deleted "and regulations" following "as provided for by the rules"; in the seventh sentence, substituted "as provided by said section" for "as provided by section three, article nine-a, chapter six of this code"; added "and with the public service commission" at the end of the tenth sentence; and made stylistic changes.

**§ 16-13A-5. General manager of board.**

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the

required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

**§ 16-13A-6. Employees of board.**

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees. (1953, c. 147; 1981, c. 124.)

**§ 16-13A-7. Acquisition and operation of district properties.**

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor

shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159.)

**Effect of amendment of 1997.** — The "more than five thousand dollars"; and in the amendment, in the second sentence, substituted "more than fifteen thousand dollars" for sixth sentence, made a stylistic change.

### § 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district. Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124.)

**Eminent domain.** — The grant of power of eminent domain to public service districts by this section is valid. *State ex rel. McMillion v. Sligh*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

If a facility creates a nuisance this harm is simply an element of just compensation in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Public service commission, in the absence of specific statutory authority, is not empowered

to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affirming the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Cited in 45 Op. Att'y Gen. 506 (1953).

### § 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued.

other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by

a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine § 16-1-9], article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer

facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three § 22-11-3, article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven § 22-11-11, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61.)

**W. Va. Law Review.** — Fisher. "The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ?" 98 W. Va. L. Rev. 449 (1996).

**Abandonment of private systems.** — Where a public service district requires a property owner, tenant, or occupant to connect onto its sewer system and to abandon a private sewer system located on the property, such person cannot recover from the public service district the value of the private system on the ground that such abandonment constitutes a taking of private property without just compensation within the meaning of W. Va. Const., art. III, § 9. Kingmill Valley Pub. Serv. Dist. v. Riverview Estates Mobile Home Park, 182 W. Va. 116, 386 S.E.2d 483 (1989).

**Buffer-zone requirements.** — Public Service Commission did not err in finding that the proposed sewage lagoons site satisfied the buffer-zone requirements. Sexton v. Public Serv. Comm'n, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Duty to pay.** — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. Rhodes v. Maiden Pub. Serv. Dist., 171 W. Va. 645, 301 S.E.2d 601 (1983) (construing this section prior to 1980 and 1981 amendments).

side the boundaries of the districts, but within the 10-mile limit, to hook onto the district's sewer facilities. Op. Atty. Gen., July 8, 1976. W. Va. 135, 361 S.E.2d 777 (1995).

**§ 16-13A-9a. Limitations with respect to foreclosure.**

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen §§ 16-13A-9 or 16-13A-19 of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1982, c. 74.)

**§ 16-13A-10. Budget.**

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board. (1953, c. 147; 1981, c. 124.)

**Textbooks.** — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Michie).

**§ 16-13A-11. Accounts; audit.**

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited. Provided, That such audit may be any audit by an independent public accountant completed within one year of the time required for the submission of the report. Provided, however, That if the district is required to have its books, records and accounts audited

annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine (§ 6-9-1 et seq.), chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

*Textbooks.* — Instructions for Virginia and West Virginia. Publisher's Editorial Staff (Richie)

**§ 16-13A-12. Disbursement of district funds.**

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board. (1953, c. 147; 1981, c. 124.)

**§ 16-13A-13. Revenue bonds.**

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such

form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

*Cross references.* — Procedure for borrowing and issuing bonds. § 16-13A-25.

**§ 16-13A-14. Items included in cost of properties.**

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147.)

**§ 16-13A-15. Bonds may be secured by trust indenture.**

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or

without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

**§ 16-13A-16. Sinking fund for revenue bonds.**

At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions. (1953, c. 147.)

**§ 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.**

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or

refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to writ of mandamus, see Rule 81(a) and 51.

As to effect of rules on jurisdiction and venue, see Rule 82.

**Mandamus.** — Mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to require a municipal corporation to comply with rate covenants in its revenue bonds. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

Under this section, any holder of the bonds of the Union public service district shall have the right by mandamus to enforce and compel the performance of all the duties required by statute or undertaken by the district in connection with the issuance of bonds by such district. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

**§ 16-13A-18. Operating contracts.**

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1953, c. 147.)

**§ 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.**

In any case where a public service district owns a water, sewer or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately-owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three § 59-3-1 et seq., chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160.)

**Effect of amendment of 1997.** — The "all" preceding "the members of the public service amendment, in the first paragraph, substituted "vicor board"; and rewrote the provision, "a majority of not less than sixty percent of" for

**§ 16-13A-19. Statutory mortgage lien created; foreclosure thereof.**

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

**In general.** — The provision granting bond-

holders a statutory mortgage lien is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**§ 16-13A-20. Refunding revenue bonds.**

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded. (1953, c. 147.)

**In general.** — The only purpose for refunding bonds is the retirement or refinancing of outstanding bond issues of a particular district. Op. Atty Gen., July 8, 1976.

**Combination of bond issues.** — Combination of two outstanding bond issues into one refunding bond issue may well be restricted by Op. Atty Gen., July 8, 1976.

the use of the singular language in this section. Op. Atty Gen., July 8, 1976.

**Previous issuance of bonds.** — This section is clearly written in language which speaks only of refunding bonds issued by any district which has previously issued bonds. Op. Atty Gen., July 8, 1976.

**§ 16-13A-21. Complete authority of article; liberal construction; district to be public instrumental-ity; tax exemption.**

This article is full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article: Provided, That all functions, powers and duties of the public service commission of West Virginia, the bureau of public health, the division of environmental protection and the environmental quality board remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it are exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent. (1953, c. 147; 1986, c. 81; 1994, c. 61.)

**Constitutionality.** — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art.

X, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Applied in *Rhodes v. Mallden*, Pub. Serv. Dist., 171 W. Va. 645, 301 S.E.2d 601 (1983).

**§ 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.**

All acts and proceedings taken by any county court [county commission] of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect [January 29, 1960], for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

*Editor's notes.* — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 16-13A-23. Validation of acts and proceedings of public service boards.**

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect [March 13, 1965], by any county court [county commission] of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification. Provided, however, That nothing herein con-

tained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

*Editor's notes.* — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 16-13A-24. Acceptance of loans, grants or temporary advances.**

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118.)

*Permissible borrowing.* — The borrowing note is permissible borrowing under this section by public service districts of money from counties, cities, towns, and/or municipalities, as evidenced by a

**§ 16-13A-25. Borrowing and bond issuance; procedure.**

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four [§ 16-13A-13, § 16-13A-20 or § 16-13A-24] of this article, without the prior consent and approval of the public service commission. The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or

feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, evidence of compliance with chapter five-g [§ 5G-1-1 et seq.] of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm in the past two years requiring engineering services; or (2) completion of a construction project within the past two years requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall profile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

- (a) The amount of money to be borrowed, or the amount of revenue bonds to be issued; Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;
  - (b) The interest rate and terms of the loan or bonds; Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;
  - (c) The public service properties to be acquired or constructed, and the cost of the public service properties;
  - (d) The anticipated rates which will be charged by the public service district; Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and
  - (e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.
- In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159.)

**Cross references.** — Class II legal advertisement defined, § 59-3-2.  
**Effect of amendment of 1996.** — The occurrence of "district" inserted "public service" in the second paragraph, substituted "Thirty days" for "Sixty days" and inserted "public service" preceding the second occurrence of "district"; inserted "public service" in (d); and made stylistic changes.

**Effect of amendment of 1997.** — The amendment inserted the second and third sentences of the first paragraph.

**Certificate.** — Under this section, a public service district must first obtain a certificate of public convenience and necessity before it can acquire or construct public service property. *Section v. Public Serv. Comm'n. 188 W. Va. 305, 423 S.E.2d 914 (1992).*

**Eminent domain.** — Although construction of a new facility proposed by a utility will often require the taking of private property through eminent domain, in the absence of express statutory language, the public service commission has no duty to review and decide issues that are inherent in the eminent domain proceeding. *Section v. Public Serv. Comm'n. 188 W. Va. 305, 423 S.E.2d 914 (1992).*

ARTICLE 13B.

COMMUNITY IMPROVEMENT ACT.

- Sec. 16-13B-1. Short title.
- 16-13B-2. Definitions.
- 16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.
- 16-13B-4. Determination of need and feasibility of creating an assessment district.
- 16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.
- 16-13B-6. Petition of property owners for creation of assessment district.
- 16-13B-7. Receipt of petition of property owners; ordinance or order authorizing creation of assessment district and construction of project.
- 16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.
- 16-13B-9. Provisions for construction of a project.
- 16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits.
- 16-13B-11. Construction of projects; assessments; corner lots, etc.
- 16-13B-12. Apportionment and assessment of cost.
- 16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of these in charge to cause assessments to be paid.
- 16-13B-14. Method of paying for cost of project; how assessments may be evidenced.
- 16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.
- 16-13B-16. No liability of state, county, municipality and assessment district.
- 16-13B-17. Payment of assessment fees; releases.
- 16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.
- 16-13B-19. Reassessment for void, irregular or omitted assessments.
- 16-13B-20. How additional territory may be added to assessment district.
- 16-13B-21. Operation and maintenance of wastewater and water projects; rates and charges therefor.
- 16-13B-22. Liberal construction.

§ 16-13B-1. Short title.

This article shall be known and may be cited as the "West Virginia Community Improvement Act." (1992, c. 150.)

§ 16-13B-2. Definitions.

For purposes of this article:

(a) "Assessment certificate" means a certificate issued by a board pursuant to section fifteen [§ 16-13B-15] of this article to evidence an assessment levied



IN THE COUNTY COURT OF LOGAN COUNTY, WEST VIRGINIA  
IN RE: BUFFALO CREEK PUBLIC SERVICE SYSTEM

WHEREAS on June 5, 1972, pursuant to Chapter 16, Article 13A, Section 2, a petition was presented to this Court requesting that this Court set up a Public Service District in the Buffalo Creek area of Logan County, and said petition was filed in the Office of the Clerk of the County Court.

WHEREAS, pursuant to said petition there was on June 21, 1972, a public hearing at the Buffalo Creek Grade School held in accordance with the provisions of said Chapter 16, Article 13A, Section 2 with the proper notices of publication and all persons residing in or on or having any interest in property in said proposed district had an opportunity to be heard for and against its creation.

WHEREAS, the County Court of Logan County has determined that a creation of a Public Service District covering the water shed of the Buffalo Creek area would be conducive to the preservations of public health, comfort and convenience of said area. Therefore, upon proper motion and second the County Court of Logan County does hereby ORDER the establishment of and does establish and create a public service district under the provisions of Chapter 16, Article 13A, Section 2 of the West Virginia Statutory Code to have all of the powers enumerated in said Chapter and Article. Said Public Service District shall be known as "The Buffalo Creek Public Service District".

It is further ORDERED that said Public Service District shall have the following boundary lines.

BEGINNING at a point in the Spring Mountain Lookout Tower, said point being in the Boone-Logan County line; thence, southeasterly with the meanders of said Boone-Logan County line 4.25 miles, more or less, to a point in the common corner to Boone-Wyoming and Logan County; thence, southwesterly with the meanders of the Wyoming-Logan County line and with the top of Buffalo Mountain 10.65 miles, more or less, to a point in the 37° - 45' meridian line; thence, due West with said 37° - 45' meridian line 5.85 miles, more or less, to a point in the eastern corporate boundary line of City of Man; thence, due North 1.65 miles, more or less, to a point in the Logan-Triadelphia Magisterial District line; thence, northeasterly with the meanders of said Magisterial line 15.95 miles, more or less, to the place of beginning and containing 43.55 square miles (27,870 acres), more or less.

said boundary line is more definitely shown by a partial map of said county outlined in red, which is attached hereto and incorporated as a part hereof.

Upon proper motion and second the Court does hereby appoint the following members of the Board of said Public Service District for the following terms of office for the purpose of the terms of office, the first effective date of the appointment will be the 1st day of the month of the appointment or July 1, 1972, Newman Merritt for a term of two (2) years, Charlie Gowan FOR A TERM of four (4) years, and Charles Frye for a term of six (6) years.

each month beginning after the initial operation of said Public Service District, an accounting of the income and disbursements of said Public Service District.

Done this the 24th day of July, 1972.

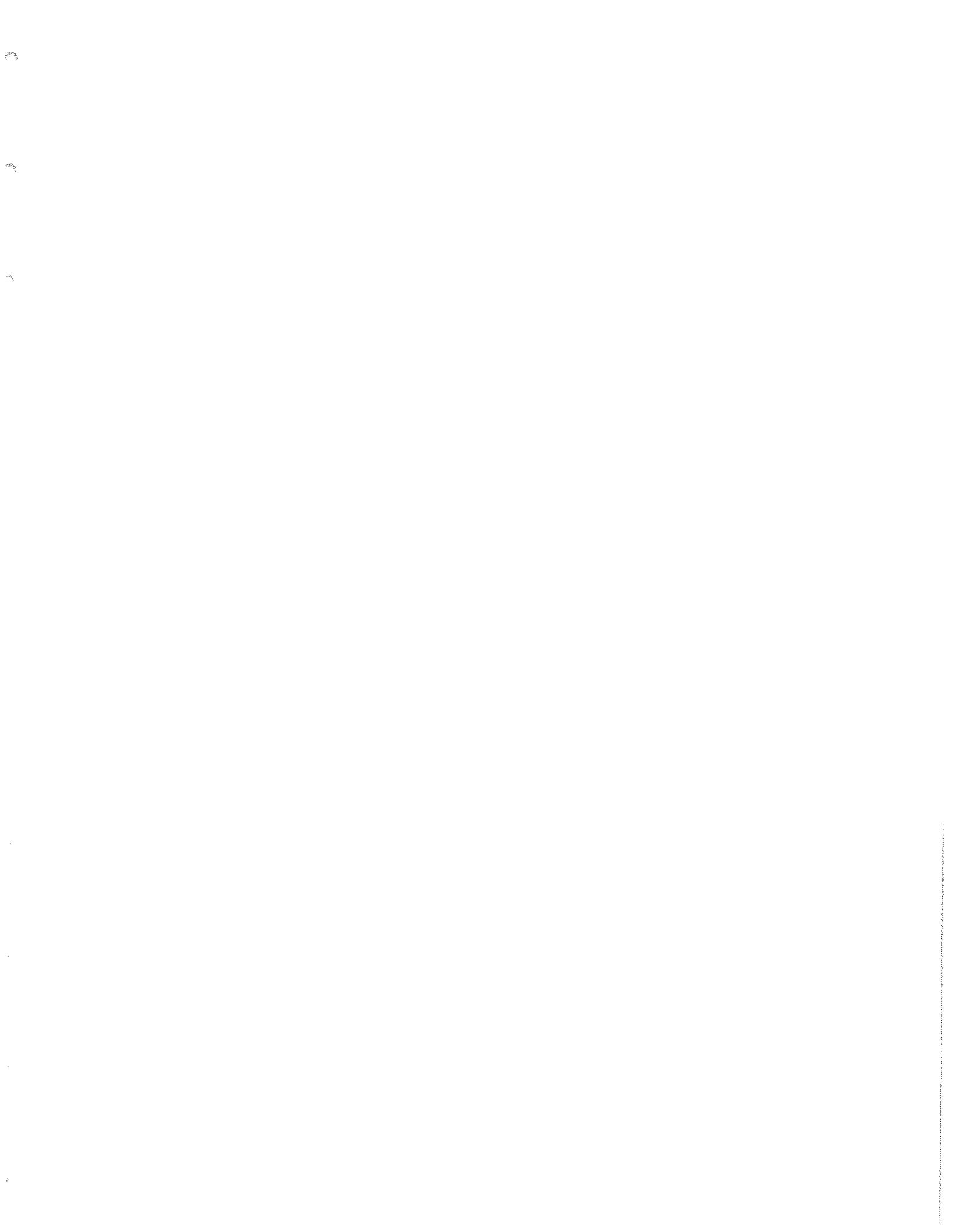
E N T E R :

ENTER

President

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PRESIDENT



RULES OF PROCEDURE

THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

Section 2. The principal office of this Public Service District will be located at Amherstdale, West Virginia.

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

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

ARTICLE II

PURPOSE

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

ARTICLE III

MEMBERSHIP

Section 1. The members of the Public Service Board of this District shall be those persons appointed by The County Commission of Logan 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 third (3rd) Wednesday of each month at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Public Service Board may be called at any time by the Chairman or by a quorum of the Board.

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

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

##### PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended, notice of the time and place of all regularly scheduled sessions of such Public Service Board, and the time, place and purpose of all special sessions of such Public Service Board, shall be made available, in advance, to the public and news media as follows:

A. A notice shall be posted by the Secretary of the Public Service Board of the Public Service District at the front door of the Logan County Courthouse and at the front door of the place fixed for the regular meetings of the Public Service Board of the time and place fixed and entered of record by the Public Service Board for the holding of regularly scheduled sessions. If a particular regularly scheduled session is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the front doors of the Courthouse and the meeting place as soon as feasible after such cancellation or postponement has been determined upon.

B. A notice shall be posted by the Secretary of the Public Service Board at the front door to the Logan County Courthouse and at the front door of the place fixed for the regular meetings of the Public Service Board at least 48 hours before a special session is to be held, stating the time, place and purpose for which such special session shall be held. If the special session is cancelled, a notice of such cancellation shall be posted at the front doors of the Courthouse and the meeting place as soon as feasible after such cancellation has been determined upon.

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

THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL SESSION

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

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

2.

\_\_\_\_\_  
Secretary

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

## ARTICLE V

### OFFICERS

Section 1. The officers of the Public Service Board shall be a Chairman, Secretary and 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 the month of January of such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected hereinabove provided.

## ARTICLE VI

### DUTIES OF OFFICERS

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

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

4.

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

Section 4. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board.

## ARTICLE VII

### AMENDMENTS TO RULES OF PROCEDURE

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

07/18/90  
BCSJ.U2  
11609/89001

# THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

P. O. Box 209  
Amherstdale, W. Va. 25607

(304) 583-6586

## MINUTES

April 16, 1996

The Public Service Board of Buffalo Creek Public Service District met for its regular monthly meeting on April 16, 1996, at 5:00 p.m. at the office of the District at Braeholm, Logan County, West Virginia.

The following persons were present:

Jack L. Brock, Chairman and Board Member  
Terry Jude, Secretary-Treasurer and Board Member  
Jack Garrett, Board Member  
David Crawford, General Manager  
Phillip Cantrell, Water Plant Chief Operator  
Juanita Harvey, Office Secretary  
Judy McClellan, Office Secretary  
Edward I. Eiland, Attorney for the District  
James L. Stover, P. E., of HNTB Corporation, Consulting Engineers  
Peter B. Eiland

The meeting was called to order by Chairman Jack L. Brock, who presided.

The minutes of the regular meeting of March 19, 1996, and the special meeting of March 28, 1996, were read and, upon motion by Mr. Brock and seconded by Mr. Jude, were approved.

The March water report was approved upon motion by Mr. Brock and seconded by Mr. Jude. The Board noted with pleasure that the water loss for March had been reduced to twenty-three percent (23%) and commended the entire work force for this improvement.

The Board also noted from the March water report that the Complaint of Jim Clark at the Board's meeting on March 19, 1996, concerning his water service, had been investigated. The General Manager presented a copy of a letter dated April 15, 1996, to Mr. Clark from Jennifer J. Miller, P. E., District Engineer for the State Department of Health and Human Resources, which reads as follows:

"April 15, 1996

James E. Clark  
P.O. Box 174  
Man, WV 25635

RE: Water Quality Complaint  
Buffalo Creek PSD  
PWSID #3302347  
LOGAN COUNTY

Dear Mr. Clark:

Please find enclosed the results of the bacteriological samples I took from your residence and from Jack Garrett's residence on April 1, 1996. Both samples tested total coliform absent. It is my understanding that the samples taken a week earlier by Buffalo Creek PSD tested total coliform absent as well. This means that there is no bacteria present in the water.

As I mentioned earlier, the Bureau for Public Health does not regulate taste, odor, or color of the water. The residue in the commode and on the clothing you showed me appears to be iron, which is not a regulated contaminant.

I understand your frustration in having discolored water, but rest assured that it does not represent a health hazard.

Sincerely,  
/s/ JENNIFER J. MILLER  
Jennifer J. Miller, P.E.  
District Engineer"

Upon motion by Mr. Brock and seconded by Mr. Jude, the March sewer report was approved.

Upon motion by Mr. Brock and seconded by Mr. Jude, the March financial statements were approved.

The following sealed bids to sell a 1996 dump truck to the District, meeting specifications approved at the Board's meeting on March 19, 1996, which had been received prior to the start of the meeting, were opened and read:

<u>Bidder</u>		<u>Total Price</u>
General Truck Sales		\$38,388.44
	(Selling price)	33,970.00
R. F. Steiner Co.	1996	36,219.00
	1995	38,758.00
Thompson Trucks		34,158.55

The General Manager was directed to evaluate the bids and report his recommendations to the Board.

James L. Stover, P. E., of HNTB Corporation, the District's consulting engineer for the District's Project A-1, Wastewater Treatment Plant Digester and Headworks Improvements (SRF Project C-544-092-01), and Project B-1, I/I Study, Sewer System Analysis, and Sludge Handling Facilities (SRF Project C-544-203-00), presented Project Priority List Fact Sheets requesting that those projects be placed upon the State Revolving Fund's Project Priority List for Fiscal Year 1997 and an Application for a State Revolving Fund Loan for construction costs of Project A-1. Upon motion by Mr. Garrett and seconded by Mr. Jude, the Chairman was authorized to sign those fact sheets and said application for a loan for construction costs, and he thereupon signed them.

Upon motion by Mr. Brock and seconded by Mr. Jude, the bills of Jackson & Kelly, Attorneys at Law, in the amount of Four Thousand Dollars (\$4,000.00) for fee and expenses incurred serving as Bond Counsel with respect to the District's \$110,000.00 Sewerage System Revenue Bond, Series 1996A, and Four Thousand Dollars (\$4,000.00) for fee and expenses incurred serving as Bond Counsel with respect to the District's \$152,100.00 Sewerage System Revenue Bond, Series 1996B, were approved for payment out of the proceeds of those bonds.

Upon motion by Mr. Brock and seconded by Mr. Jude, the following resolution was unanimously adopted:

BE IT RESOLVED, That Section 1, Article IV, of Rules of Procedure of the Buffalo Creek Public Service District be, and it is, hereby amended to read as follows:

Section 1. The members of the Public Service Board of this District shall hold regular monthly meetings on the third (3rd) Tuesday of each month at 5:00 p.m. at the District's office. 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.

BE IT FURTHER RESOLVED, That the Secretary of this Board post at the front door of the Logan County Courthouse and at the front door of this District's office notice of the time and place fixed for this Board's regular meetings and send such notice to THE LOGAN BANNER.

Upon motion by Mr. Garrett and seconded by Mr. Jude, the following resolution was unanimously adopted:

BE IT RESOLVED, That Section 4, Subsection B, Article IV, of Rules of Procedure of the Buffalo Creek Public Service District be, and it is, hereby amended to read as follows:

B. A notice shall be posted by the Secretary of the Public Service Board at the front door of the Logan County Courthouse and at the front door of the place fixed for the regular meetings of the Public Service Board at least twenty-four (24) hours before a special session is to be held, stating the time, place, and

purpose for which such special session shall be held. If the special session is canceled, a notice of such cancellation shall be posted at the front doors of the Courthouse and the meeting place as soon as feasible after such cancellation has been determined upon.

The General Manager reported that an identification number would be assigned to each fire hydrant in the district and that each hydrant would be inspected during the current month.

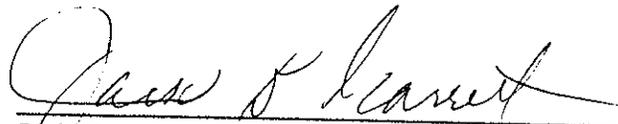
There being no further business, the meeting was adjourned.

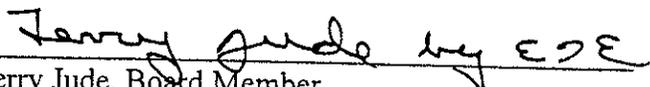
  
Chairman

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Secretary-Treasurer

  
Jack L. Brock, Board Member

  
Jack Garrett, Board Member

  
Terry Jude, Board Member



IN THE COUNTY COMMISSION OF LOGAN COUNTY,  
WEST VIRGINIA

IN RE: BUFFALO CREEK PSD-REAPPOINTMENT

The County Commission of Logan County, West Virginia, being apprised that the term of JACK BROCK does expire on the BUFFALO CREEK PUBLIC SERVICE DISTRICT, does, upon motion duly made, seconded and passed, reappoint Mr. Brock to another six-year term on the said Buffalo Creek Public Service District, said term to expire July, 2004.

ENTERED this the 5<sup>th</sup> day of AUGUST, 1998.

Arthur E. Kirkendoll  
Arthur E. Kirkendoll  
President

Danny R. Godby  
Danny R. Godby  
Commissioner

Willie D. Akers  
Willie D. Akers, Jr.  
Commissioner

STATE OF WEST VIRGINIA  
COUNTY OF LOGAN, TO WIT:

I, Glen D. Adkins, Clerk of the County Commission within and for County of Logan, and the State of West Virginia do hereby certify that the above and foregoing is a true, correct and complete copy of Reappointment of James Brock as the same appears on record in my said office in Co. Commissioner's Records Book \_\_\_\_\_ Page \_\_\_\_\_ August 5, 1998  
Given under my hand and seal this 7<sup>th</sup> day of August 1998.

Glen D. Adkins, Clerk  
Logan County Commission  
By: Crystal Maynard

IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

IN RE: BUFFALO CREEK PUBLIC SERVICE DISTRICT  
REAPPOINTMENT OF TERRY JUDE

The County Commission of Logan County, West Virginia, being cognizant that the term of Mr. Terry Jude does expire this date on the Buffalo Creek Public Service District, upon motion duly made, seconded, and passed unanimously, reappoints Mr. Jude to a new term on the said Buffalo Creek Public Service District for a term of six (6) years beginning this date and expiring June, 2003.

ENTERED this the 9th day of June, 1997.

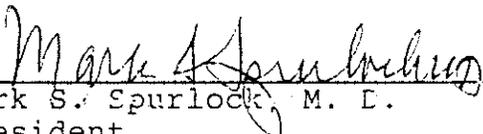
  
\_\_\_\_\_  
Arthur E. Kirkendoll  
President

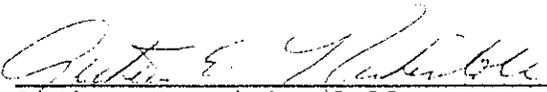
IN THE COUNTY COMMISSION OF LOGAN COUNTY, WEST VIRGINIA

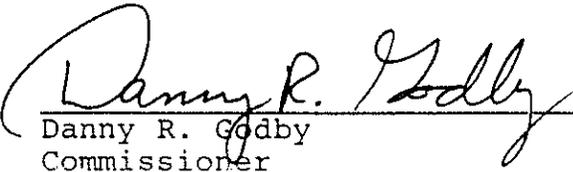
IN RE: REAPPOINTMENT - BUFFALO CREEK  
PUBLIC SERVICE DISTRICT

The County Commission of Logan County, West Virginia, being apprised that the term of Mr. JACK GARRETT does expire on this date on the BUFFALO CREEK PUBLIC SERVICE DISTRICT, does, upon motion duly made, seconded and passed, reappoint Mr. Garrett to a new term of six (6) years on the said Buffalo Creek Public Service District, said term to expire July 5, 2002.

ENTERED this the 5th day of July, 1996.

  
\_\_\_\_\_  
Mark S. Spurlock, M. D.  
President

  
\_\_\_\_\_  
Arthur E. Kirkendoll  
Commissioner

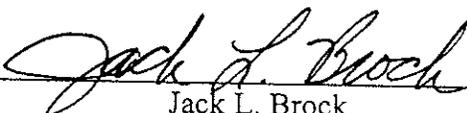
  
\_\_\_\_\_  
Danny R. Godby  
Commissioner

STATE OF WEST VIRGINIA

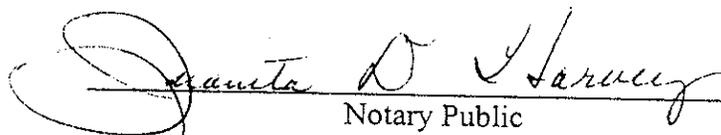
COUNTY OF LOGAN, TO-WIT:

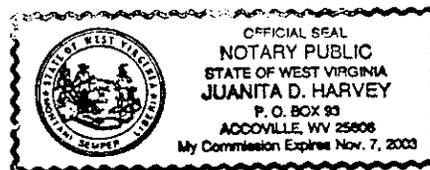
OATH OF OFFICE

I, JACK L. BROCK, being duly sworn, hereby 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 member of the Public Service Board of Buffalo Creek Public Service District to the best of my skill and judgment, so help me God.

  
\_\_\_\_\_  
Jack L. Brock

Taken, sworn to and subscribed before me this 1~~8~~<sup>7</sup>th day of August, 1998.

  
\_\_\_\_\_  
Notary Public



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

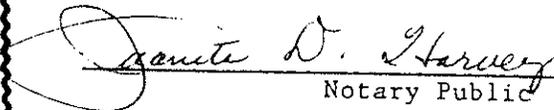
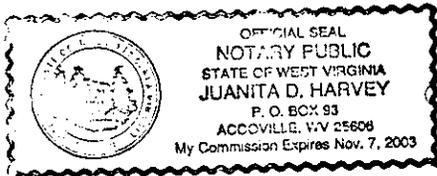
OATH OF OFFICE

I, TERRY JUDE, being duly sworn, hereby 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 member of the Public Service Board of Buffalo Creek Public Service District to the best of my skill and judgment, so help me God.



Terry Jude

Taken, sworn to and subscribed before me this 17th day of June, 1997.



Notary Public

# THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

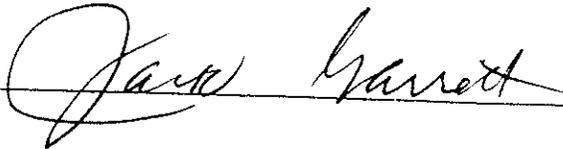
P. O. BOX 209  
AMHERSTDALE, WEST VIRGINIA 25607

(304) 583-6586

STATE OF WEST VIRGINIA

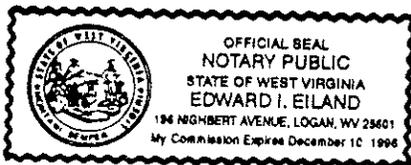
COUNTY OF LOGAN, TO-WIT:

I, JACK GARRETT, hereby 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 Member of the Public Service Board of the Buffalo Creek Public Service District to the best of my skill and judgment.

  
\_\_\_\_\_

Taken, sworn to, and subscribed before me this 16th day of July, 1996.

My commission expires December 10, 1996.



  
\_\_\_\_\_  
Notary Public

SRF-LP-1  
(August 1998)

LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Bureau of Environment (the "DEP"), and the local government designated below (the "Local Government").

BUFFALO CREEK PUBLIC SERVICE DISTRICT  
(Local Government)

WITNESSETH:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 20, Article 5I, of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of

wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to construct, operate and improve a wastewater treatment project and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a 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 the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Loan Agreement.

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

1.7 "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.

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, 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 Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Local Government 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 Local Government 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 Local Government, 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 is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective 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 Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, at 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 DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government 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 Local Government shall permit the Authority and DEP, acting by and through their Directors or 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 Local Government shall submit to the Authority and DEP such documents and information as it 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 Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government 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 Local Government 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.

2.8 The Local Government 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 Authority and DEP. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) 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 Local Government, 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 Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government 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 Local Government shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, DEP and the Local Government 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. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP 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 Local Government, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward the Form to DEP in compliance with the Local Government's construction schedule.

### ARTICLE III

#### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, 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 Local Government shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(c) The Local Government 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;

(d) The Local Government 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 financing of construction, the Local Government 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 DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government 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 DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(g) The Local Government shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(h) The Local Government 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, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsection 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountants for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) 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 and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP 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 and DEP, including the SRF Regulations, 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 Local Government and the Local Government shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Government 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 Local Government 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, DEP and the Local Government. 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 set forth in Exhibit E hereto.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The

Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

#### ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. The revenues generated from the operation of the System will 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 in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the net revenues from the System;

(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 established for the payment of debt service on the Local Bonds is funded (whether by Local Bond proceeds, monthly deposits or otherwise) 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 Local Government will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may be sold, mortgaged, leased or otherwise disposed of as a whole or substantially as a whole provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the local bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government 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 written consent of the Authority and DEP; 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 Local Government 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 Local Government will not render any free services of the System;

(viii) That any Local Bond owner may, by proper legal action, compel the performance of the duties of the Local Government 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 or of 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 and all rights as set forth in Section 5 of the Act;

(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 Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government 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 DEP, which report shall include a statement that the Local Government is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Local Government 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 DEP 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, except for accrued interest and capitalized interest, if any, 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 Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, 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 Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the Local Government 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 West Virginia Municipal Bond Commission (the "Commission") its required interest, principal and reserve fund payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check to the Authority by the 5th day of such calendar month;

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

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

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers 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, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project; and

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, 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 Local Government, then the Local Government shall enter into a termination agreement with the water provider.

The Local Government 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, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y 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.

4.4 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 Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include without limitation Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

## ARTICLE V

### Certain Covenants of the Local Government; Imposition and Collection of User Charges; Payments To Be Made by Local Government to the Authority

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

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

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, 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 Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System.

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by local governments in the terms and covenants of loan agreements, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have

recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP 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 DEP 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 DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the SRF Regulations or this Loan Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Loan.

6.4 The Local Government 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 Local Government fails to make any such rebates as required, then the Local Government 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.

6.5 Notwithstanding Section 6.4, the Authority and DEP may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Government to be monitored or cause the rebate calculations for the Local Government to be prepared, in either case at the expense of the Local Government.

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

## ARTICLE VII

### Miscellaneous

7.1 Schedule 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 Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 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.

7.3 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.

7.4 No waiver by any 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.

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

7.6 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Local Government 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.

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this Loan Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the amount of the Loan made by the Authority and DEP as set forth in (iii) above is not terminated due to such non-funding on any balance on the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default under the Loan Agreement.

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.

Buffalo Creek Public Service District  
[Proper Name of Local Government]

(SEAL)

By: *[Signature]*  
Its: Chairman

Attest:

Date: 7/22/98

*[Signature]*  
Its Secretary

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: *[Signature]*  
Its: Chief

Date: 9/30/98

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: *[Signature]*  
Its: Director

Attest:

Date: September 18, 1998

*[Signature]*  
Secretary-Treasurer

**EXHIBIT A**

**[Form of Performance Certificate]**

**[TO BE PROVIDED BY DEP]**

EXHIBIT B

[Form of Monthly Financial Report]  
[Name of Local Government]  
[Name of Bond Issue]  
Fiscal Year - \_\_\_\_  
Report Month: \_\_\_\_\_

<u>ITEM</u>	<u>CURRENT MONTH</u>	<u>YEAR TO DATE</u>	<u>BUDGET YEAR TO DATE</u>	<u>BUDGET DIFFERENCE</u>
1. Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. SRF Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

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

[Name of Local Government]

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

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, hereby certify that my firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (herein called the "Project") of \_\_\_\_\_ (the "Issuer") to be constructed primarily in \_\_\_\_\_ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the \_\_\_\_\_ passed by the \_\_\_\_\_ of the Issuer on \_\_\_\_\_, 19\_\_\_\_, effective \_\_\_\_\_, 19\_\_\_\_, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated \_\_\_\_\_, 19\_\_\_\_.

1. The Bonds are being issued for the purpose of \_\_\_\_\_ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the \_\_\_\_\_ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) 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 irrevocably committed therefor, are sufficient to pay the costs of construction and

acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

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

\_\_\_\_\_

By \_\_\_\_\_

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

[SEAL]

## EXHIBIT E

### SPECIAL CONDITIONS

A. The recipient agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. **AUDIT REQUIREMENT** (Supplement to Article IV 4.1 (b) (xi)) - The loan recipient that receives \$300,000 or more in a fiscal year must obtain audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133 or any appropriate successor. Financial statement audits are required once all funds have been received by the loan recipient.

EXHIBIT F

[Monthly Payment Form]

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

Re: [Name of bond issue]

Dear Sirs:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Local Government] on \_\_\_\_\_, \_\_.

Sinking Fund:

Interest \$\_\_\_\_\_

Principal \$\_\_\_\_\_

Total: \$\_\_\_\_\_

Reserve Fund: \$\_\_\_\_\_

Witness my signature this \_\_\_\_ day of\_\_\_\_\_.

[Name of Local Government]

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

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Loan Closing]

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

Gentlemen:

We are bond counsel to \_\_\_\_\_ (the "Local Government"), a  
\_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated \_\_\_\_\_, 19\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated \_\_\_\_\_, 19\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$\_\_\_\_\_, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable \_\_\_\_\_ 1, \_\_\_\_ 1, \_\_\_\_ 1, and \_\_\_\_ 1 of each year, beginning \_\_\_\_ 1, 19\_, at the respective rate or rates and with principal payable in installments on \_\_\_\_ 1 in each of the years, all as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
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The Local Bonds are issued for the purpose of \_\_\_\_\_ and 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 enacted by the Local Government on \_\_\_\_\_ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that 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 Local Government and is a valid and binding special obligation of the Local Government enforceable in accordance with the terms thereof.

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

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

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

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

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

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

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

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF BONDS

Principal Amount of Bonds	\$ 1,797,894
Purchase Price of Bonds	\$ 1,797,894

Interest on the Bonds shall be zero percent from the date of delivery to and including November 30, 1999. Principal and interest on the Bonds is payable quarterly, commencing March 1, 2000, at a rate of 2% per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has [other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds] or [provide list of outstanding debt]. (See attached schedule) \*

The Local Government shall submit its payments monthly to the West Virginia Municipal Bond Commission with instructions that the West Virginia Municipal Bond Commission will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the Bond Commission in writing by the Authority. If the Reserve Fund is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Bond Commission. The Local Government shall instruct the Bond Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and interest and such Bonds shall grant the Authority a first lien on the net revenues of the Local Government's system.

The Local Government may prepay the Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Bonds which request must be filed at least 60 days prior to the intended date of issuance.

\* The Sewerage Revenue Bonds, Series 1990 A dated July 24, 1990, issued in the aggregate principal amount of \$438,497, the Sewerage System Revenue Bonds, Series 1996 A dated March 26, 1996, issued in the aggregate principal amount of \$110,000, and the Sewerage System Revenue Bonds, Series 1996 B, dated March 26, 1996, issued in the aggregate principal amount of \$152,100.

SCHEDULE Y

**Buffalo Creek PSD, WV**

*SRF Loan No. C-544092-02*

*\$1,797,894; 20 Years; 2% Interest; 1% Administrative Fee*

**DEBT SERVICE SCHEDULE**

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Total P+I</b>
12/01/1998	-	-	-	-
3/01/1999	-	-	-	-
6/01/1999	-	-	-	-
9/01/1999	-	-	-	-
12/01/1999	-	-	-	-
3/01/2000	18,333.19	2.000%	8,989.47	27,322.66
6/01/2000	18,424.86	2.000%	8,897.80	27,322.66
9/01/2000	18,516.98	2.000%	8,805.68	27,322.66
12/01/2000	18,609.56	2.000%	8,713.09	27,322.65
3/01/2001	18,702.61	2.000%	8,620.05	27,322.66
6/01/2001	18,796.13	2.000%	8,526.53	27,322.66
9/01/2001	18,890.11	2.000%	8,432.55	27,322.66
12/01/2001	18,984.56	2.000%	8,338.10	27,322.66
3/01/2002	19,079.48	2.000%	8,243.18	27,322.66
6/01/2002	19,174.88	2.000%	8,147.78	27,322.66
9/01/2002	19,270.75	2.000%	8,051.91	27,322.66
12/01/2002	19,367.11	2.000%	7,955.55	27,322.66
3/01/2003	19,463.94	2.000%	7,858.72	27,322.66
6/01/2003	19,561.26	2.000%	7,761.40	27,322.66
9/01/2003	19,659.07	2.000%	7,663.59	27,322.66
12/01/2003	19,757.36	2.000%	7,565.30	27,322.66
3/01/2004	19,856.15	2.000%	7,466.51	27,322.66
6/01/2004	19,955.43	2.000%	7,367.23	27,322.66
9/01/2004	20,055.21	2.000%	7,267.45	27,322.66
12/01/2004	20,155.48	2.000%	7,167.18	27,322.66
3/01/2005	20,256.26	2.000%	7,066.40	27,322.66
6/01/2005	20,357.54	2.000%	6,965.12	27,322.66
9/01/2005	20,459.33	2.000%	6,863.33	27,322.66
12/01/2005	20,561.63	2.000%	6,761.03	27,322.66
3/01/2006	20,664.43	2.000%	6,658.23	27,322.66
6/01/2006	20,767.76	2.000%	6,554.90	27,322.66
9/01/2006	20,871.59	2.000%	6,451.06	27,322.65
12/01/2006	20,975.95	2.000%	6,346.71	27,322.66
3/01/2007	21,080.83	2.000%	6,241.83	27,322.66
6/01/2007	21,186.24	2.000%	6,136.42	27,322.66
9/01/2007	21,292.17	2.000%	6,030.49	27,322.66
12/01/2007	21,398.63	2.000%	5,924.03	27,322.66
3/01/2008	21,505.62	2.000%	5,817.04	27,322.66
6/01/2008	21,613.15	2.000%	5,709.51	27,322.66
9/01/2008	21,721.22	2.000%	5,601.44	27,322.66
12/01/2008	21,829.82	2.000%	5,492.84	27,322.66
3/01/2009	21,938.97	2.000%	5,383.69	27,322.66
6/01/2009	22,048.67	2.000%	5,273.99	27,322.66
9/01/2009	22,158.91	2.000%	5,163.75	27,322.66
12/01/2009	22,269.70	2.000%	5,052.96	27,322.66
3/01/2010	22,381.05	2.000%	4,941.61	27,322.66

**Buffalo Creek PSD, WV**  
*SRF Loan No. C-544092-02*  
*\$1,797,894; 20 Years; 2% Interest; 1% Administrative Fee*

**DEBT SERVICE SCHEDULE**

Date	Principal	Coupon	Interest	Total P+I
6/01/2010	22,492.96	2.000%	4,829.70	27,322.66
9/01/2010	22,605.42	2.000%	4,717.24	27,322.66
12/01/2010	22,718.45	2.000%	4,604.21	27,322.66
3/01/2011	22,832.04	2.000%	4,490.62	27,322.66
6/01/2011	22,946.20	2.000%	4,376.46	27,322.66
9/01/2011	23,060.93	2.000%	4,261.73	27,322.66
12/01/2011	23,176.24	2.000%	4,146.42	27,322.66
3/01/2012	23,292.12	2.000%	4,030.54	27,322.66
6/01/2012	23,408.58	2.000%	3,914.08	27,322.66
9/01/2012	23,525.62	2.000%	3,797.04	27,322.66
12/01/2012	23,643.25	2.000%	3,679.41	27,322.66
3/01/2013	23,761.47	2.000%	3,561.19	27,322.66
6/01/2013	23,880.27	2.000%	3,442.39	27,322.66
9/01/2013	23,999.68	2.000%	3,322.98	27,322.66
12/01/2013	24,119.67	2.000%	3,202.99	27,322.66
3/01/2014	24,240.27	2.000%	3,082.39	27,322.66
6/01/2014	24,361.47	2.000%	2,961.19	27,322.66
9/01/2014	24,483.28	2.000%	2,839.38	27,322.66
12/01/2014	24,605.70	2.000%	2,716.96	27,322.66
3/01/2015	24,728.73	2.000%	2,593.93	27,322.66
6/01/2015	24,852.37	2.000%	2,470.29	27,322.66
9/01/2015	24,976.63	2.000%	2,346.03	27,322.66
12/01/2015	25,101.51	2.000%	2,221.15	27,322.66
3/01/2016	25,227.02	2.000%	2,095.64	27,322.66
6/01/2016	25,353.16	2.000%	1,969.50	27,322.66
9/01/2016	25,479.92	2.000%	1,842.74	27,322.66
12/01/2016	25,607.32	2.000%	1,715.34	27,322.66
3/01/2017	25,735.36	2.000%	1,587.30	27,322.66
6/01/2017	25,864.04	2.000%	1,458.62	27,322.66
9/01/2017	25,993.36	2.000%	1,329.30	27,322.66
12/01/2017	26,123.32	2.000%	1,199.34	27,322.66
3/01/2018	26,253.94	2.000%	1,068.72	27,322.66
6/01/2018	26,385.21	2.000%	937.45	27,322.66
9/01/2018	26,517.13	2.000%	805.52	27,322.65
12/01/2018	26,649.72	2.000%	672.94	27,322.66
3/01/2019	26,782.97	2.000%	539.69	27,322.66
6/01/2019	26,916.88	2.000%	405.78	27,322.66
9/01/2019	27,051.47	2.000%	271.19	27,322.66
12/01/2019	27,186.73	2.000%	135.93	27,322.66
<b>Total</b>	<b>1,797,894.00</b>	<b>-</b>	<b>387,918.77</b>	<b>2,185,812.77 *</b>

\*Plus \$2,424.50 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is \$193,960.

**Buffalo Creek PSD, WV**  
*SRF Loan No. C-544092-02*  
*\$1,797,894; 20 Years; 2% Interest; 1% Administrative Fee*

**DEBT SERVICE SCHEDULE**

**YIELD STATISTICS**

Accrued Interest from 10/14/1998 to 10/14/1998.....	(40,652.38)
Bond Year Dollars.....	\$21,428.56
Average Life.....	11.919 Years
Average Coupon.....	1.8102887%
Net Interest Cost (NIC).....	1.8102887%
True Interest Cost (TIC).....	2.0080123%
Bond Yield for Arbitrage Purposes.....	2.0080123%
All Inclusive Cost (AIC).....	2.9008909%
<b>IRS FORM 8038</b>	
Net Interest Cost.....	2.0000000%
Weighted Average Maturity.....	11.919 Years

*Ferris, Baker Watts, Inc.*

*West Virginia Public Finance Department*

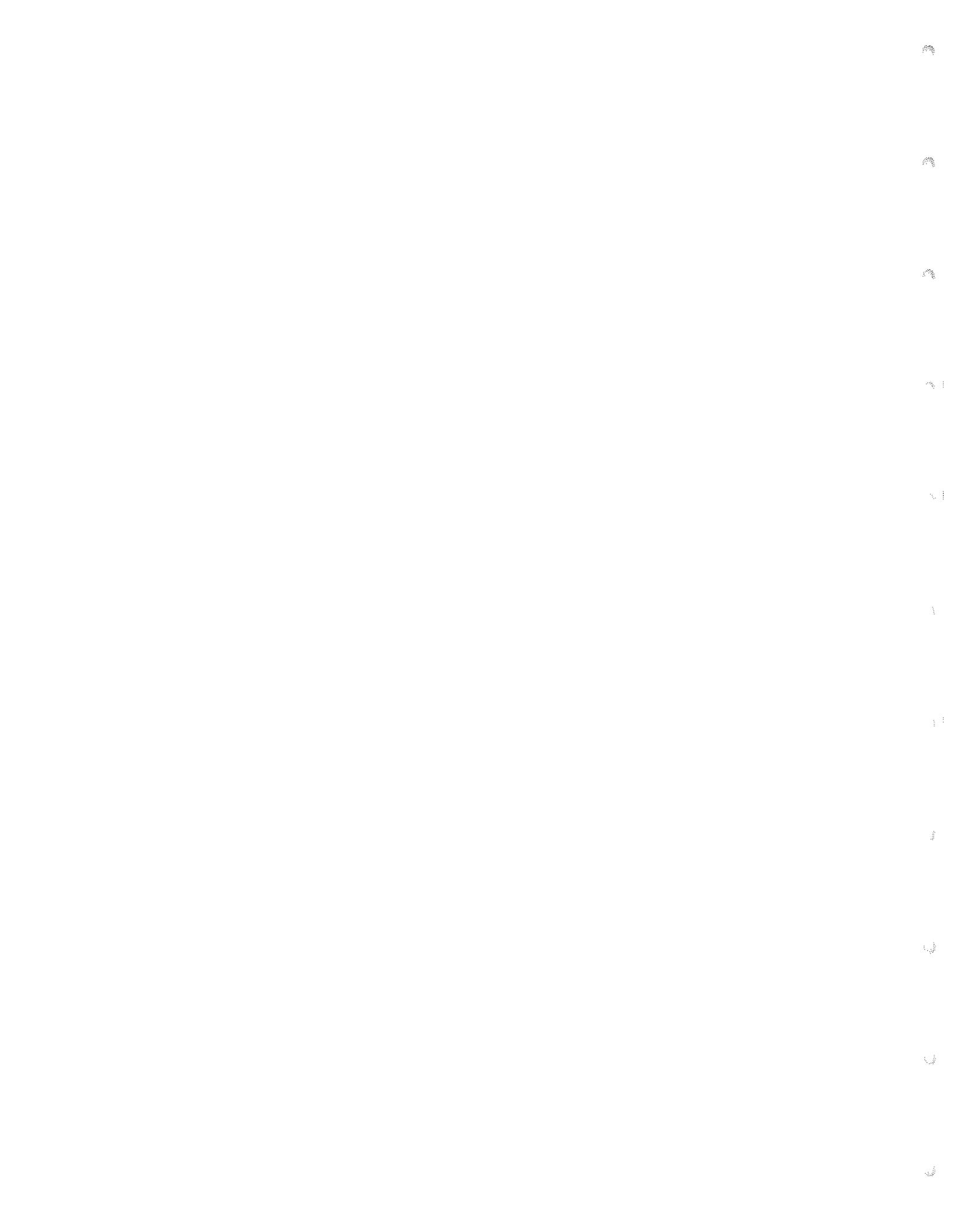
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**\$1,800,000 BUFFALO CREEK PUBLIC SERVICE DISTRICT  
SEWERAGE SYSTEM (WEST VIRGINIA SRF PROGRAM)  
REVENUE BOND, SERIES 1998 A**

**BOND RESOLUTION**



\$1,800,000 BUFFALO CREEK PUBLIC SERVICE DISTRICT  
SEWERAGE SYSTEM (WEST VIRGINIA SRF PROGRAM)  
REVENUE BOND, SERIES 1998 A

BOND RESOLUTION

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BUFFALO CREEK PUBLIC SERVICE DISTRICT

BOND RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN WASTEWATER COLLECTION AND TREATMENT FACILITIES OF BUFFALO CREEK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN \$1,800,000 IN AGGREGATE PRINCIPAL AMOUNT OF BUFFALO CREEK PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (WEST VIRGINIA SRF PROGRAM) OF THE PUBLIC SERVICE DISTRICT TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE PUBLIC SERVICE DISTRICT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BONDS; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF BUFFALO CREEK PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

**Section 1.02. Definitions.** The following terms shall have the following meanings herein unless the context expressly requires otherwise:

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

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bond, or any other agency of the State that succeeds to the functions of the Authority.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any other person duly appointed as such by the Governing Body.

"Bank" means the bank to be set forth in a resolution supplemental hereto.

"Board" means the public service board of the Issuer and shall include the membership of the Board as may hereafter be duly constituted as the legal successors to the present membership or any other authority vested with and authorized to exercise the powers of the Issuer.

"Bondholders" "Holder of the Bonds," "Holder," "Registered Owner," "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 Register" means the books of the Issuer as hereinafter defined, maintained by the Bond Registrar as hereinafter defined for the registration and transfer of the Bonds.

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

"Bond" or "Bonds" means the Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A (West Virginia SRF Program), originally authorized hereby, and any pari passu additional bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

"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.

"Certificate of Authentication and Registration" means the certificate of authentication and registration on the Bond in substantially the form set forth in the bond form contained herein.

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

"Closing Date" means the date upon which there is an exchange of the Bond for a portion of the proceeds representing the purchase of the Bond by the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

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

"Construction Trust Fund" means the Series 1998 A Bond Construction Trust Fund established by Section 5.01(3).

"Consulting Engineers" means HNTB Corporation, Scott Depot, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the acquisition and construction of sewerage systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Costs" or "Costs of the Project" or any similar phrase means those costs described in Section 1.04G hereof to be a part of the cost of construction and acquisition of the Project.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Series 1998 A Bond, as hereinafter defined, during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means a bank eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC, as hereinafter defined, which Depository Bank shall be named in the Supplemental Resolution, and any successor thereto.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Bond are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Bond, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions thereof.

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

"Governing Body" or "Board" means the public service board of the Issuer, as it is now or may 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, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Bond, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bond;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bond;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior obligations and which are deemed to become proceeds of the Bond ratably as original proceeds of the Bond, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds [as referenced in clauses (i) through (iii) above] of the Bond, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Reserve Account and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Bond by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Bond; and

(viii) Amounts received as a result of investing amounts described in this definition.

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

"Independent Certified Public 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.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income under Section 103 of the Code for federal income tax purposes.

"Issuer" or "District" means the Buffalo Creek Public Service District, a public corporation and political subdivision of the State.

"Loan Agreement" means the Water Pollution Control Revolving Fund Loan Agreement by and among the Authority, the DEP and the Issuer providing for the purchase of the Bond from the Issuer by the Authority which is attached as Exhibit B hereto and incorporated herein by reference.

"Net Proceeds" means the face amount of the Bond, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Account. For purposes of the Private Business use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of

the Bond, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bond and is not acquired in order to carry out the governmental purpose of the Bond.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System, as hereinafter defined and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs of Project, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent, other than those capitalized as part of the Costs of Project, 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 Bond, 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 canceled 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, notices or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Original Bond" or "Bond" means the \$1,800,000 Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A (West Virginia SRF Program), of the District.

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

"Paying Agent" means the Commission.

"Prior Bonds" means, collectively, the Series 1990 A Bonds, the Series 1996 A Bonds, and the Series 1996 B Bonds, all as hereinafter defined.

"Prior Note" means the Series 1998 A Sewerage System Design Note as hereinafter defined.

"Prior Resolutions" means, the Series 1990 Resolution and the Series 1996 Resolution adopted by the Board with respect to the Prior Bonds, as hereinafter defined.

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

"Program" shall mean the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by the DEP.

"Project" means the acquisition and construction of certain improvements and extensions to the existing wastewater system of the Issuer, substantially as described in Exhibit A attached hereto and incorporated herein by reference.

"PSC" means the Public Service Commission of West Virginia and any successors to the functions thereof.

"PSC Order" means the recommended decision of the PSC in Case No.97-0694-PSD-CN which grants the Issuer a Certificate of Convenience and Necessity, and approves the financing.

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

- (a) Government Obligations;

(b) 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; the Governmental National Mortgage Association; the Tennessee Valley Authority or the Washington Metropolitan Area Transit Authority;

(c) Any bond, debenture, note, participation certificate or other similar obligation 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;

(d) 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, shall be secured by a pledge of Government Obligations, provided, that such Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time account or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time account;

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

(f) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (d) 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 owner 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;

(g) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Investment Management Board pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended; and

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(h) Advance-Refunded Municipal Bonds.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established or continued by Section 5.01(2).

"Series 1998 A Bonds Reserve Account" or "Reserve Account" means the account in the Sinking Fund, as hereafter defined, created by Section 5.02(1)(a) hereof.

"Series 1998 A Bonds Reserve Requirement" or "Reserve Requirement" means as of any date of calculation the maximum amount of principal and interest with will become due on the Bond in the then current or any succeeding year.

"Resolution" shall mean this Resolution, as from time to time amended or supplemented.

"Revenue Fund" means the Revenue Fund established or continued by Section 5.01(1).

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

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

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

"Series 1990 A Bonds" means the Sewer Revenue Bonds of Issuer described in Section 1.04(N) issued July 24, 1990 in the aggregate principal amount of \$438,497.

"Series 1996 A Bonds" means the Sewerage System Revenue Bonds of Issuer described in Section 1.04(N) issued March 26, 1996, in the aggregate principal amount of \$110,000.

"Series 1996 B Bonds" means the Sewerage System Revenue Bonds of Issuer described in Section 1.04(N) issued March 26, 1996, in the aggregate principal amount of \$152,000.

"Series 1998 A Bond" means not to exceed \$1,800,000 in aggregate principal amount to evidence the loan among the Authority, the DEP and the Issuer hereby authorized.

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"Series 1997 Note" means the Sewer Note of the Issuer described in Section 1.04(N) issued July 29, 1997, in the aggregate principal amount of \$42,000.

"Series 1990 Resolution" means the Resolution adopted July 16, 1990 authorizing the issuance of the Sewer Revenue Bond, Series 1990 A.

"Series 1996 Resolution" means the Resolution adopted on March 19, 1996 authorizing the issuance of the Sewerage System Revenue Bonds, Series 1996 A and Sewerage System Revenue Bonds, Series 1997 B.

"Sinking Fund" means the Sinking Fund established by Section 5.02(1) hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution 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 Bond; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Bond and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by this Resolution or the Prior Resolution to be set aside and held for the payment of or security for the Bond, the Prior Bonds or any other obligations of the Issuer, including but not limited to the Renewal and Replacement Fund, the Reserve Account and Sinking Fund, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, owned by the Issuer, and any improvements or extensions thereto, both within and without the boundaries of the District.

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

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Bond, produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bond, all computed as prescribed in applicable Regulations.

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

Words importing singular number 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.

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

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

Section 1.03. Resolution Constitutes Contract. In consideration of the acceptance of the Bond by those who shall be the Registered Owners of the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and the covenants and agreements herein set forth to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owners of any and all such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a public corporation and political subdivision of the State in Logan County, West Virginia.

B. The Issuer presently owns and operates a public sewerage system.

C. 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 System, consisting of the Project which includes the construction and acquisition as described in Exhibit A attached hereto at an estimated cost of \$1,797,894, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Bond and the Prior Bonds, and all sinking funds, reserve accounts and other payments provided for herein and in the PSC Order.

E. The estimated maximum cost of the construction and acquisition of the Project is \$1,797,894 which will be permanently obtained from the Bonds herein authorized or from other sources as may be necessary to pay Costs of the Project.

F. The period of usefulness of the System after completion of the Project will not be less than twenty (20) years.

G. It is deemed necessary for the Issuer to issue its sewerage revenue bonds in the aggregate principal amount of not to exceed \$1,800,000, initially to be represented by a single bond, being the Buffalo Creek Public Service District Sewerage System Revenue Bonds, Series 1998 A (West Virginia SRF Program), to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of Series 1997 Note; interest on the Bond prior to and during construction or acquisition and for six months after completion of construction of the Project, if any; amounts which may be deposited in the Reserve Account, if any; engineering, fiscal agents and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority or DEP and any defaulted interest thereon, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bond, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the 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 Bond or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

H. The Issuer will make full payment of the Series 1997 Note and any administrative fee thereon on the Closing Date from the proceeds of the Original Bonds.

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

J. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the construction, acquisition and operation of the Project and the System and the issuance of the Bond, or will have so complied prior to issuance of any Bonds, including, among other things and without limitation, the obtaining of the PSC Order, the time for rehearing and appeal of which have expired prior to the date hereof. The Issuer has received the approval of the West Virginia Infrastructure and Jobs Development Council.

K. The Issuer will not permit, at any time, any of the proceeds of the Bond or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bond from the treatment afforded by Section 103(a) of the Code.

L. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bond.

M. The Bond will not be federally guaranteed within the meaning of the Code.

N. It is reasonably anticipated that all proceeds of the Bond will be spent within two years from the date of issuance.

O. There are outstanding obligations of the Issuer which will rank either on a parity with or junior or subordinate to the Bond as to liens, pledge and source of and security for payment, which obligations are designated and have the lien positions with respect to the Bonds as follows:

<u>Designation</u>	<u>Lien Position</u>
Buffalo Creek Public Service District Sewer Revenue Bonds, Series 1990 A, dated July 24, 1990, issued in the original aggregate principal amount of \$438,497 (the "Series 1990 A Bonds");	First Lien
Buffalo Creek Public Service District Sewerage System Revenue Bonds, Series 1996 A dated March 26, 1996, issued in the original aggregate principal amount of \$110,000 (the "Series 1996 A Bonds");	First Lien
Buffalo Creek Public Service District Sewerage System Revenue Bonds, Series 1996 B, dated March 26, 1996, issued in the original aggregate principal amount of \$152,100 (the "Series 1996 B Bonds");	First Lien

The Series 1990 A Bonds, the Series 1996 A Bonds and the Series 1996 B Bonds, are hereinafter collectively called the "Prior Bonds."

The Bonds shall be issued on a parity with the Prior Bonds with respect to the liens, pledge and source of and security for payment and in all other respects the Issuer has complied with the requirements for issuance of parity bonds in the Prior Resolutions. Other than the Prior Bonds, and after payment of the Series 1997 Note, there are no outstanding bonds or obligations of the Issuer which are secured by the revenues or assets of the System.

O. The Issuer has, by certification from an independent certified public accountant, met the parity test of Section 7.07 of the Prior Resolution.

## ARTICLE II

### AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

#### Section 2.01. Authorization of Construction and Acquisition of the Project.

There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications prepared by Consulting Engineers, and approved by DEP and the District and filed in the office of the Board. The proceeds of the Bonds hereby authorized shall be applied as provided in Article VI hereof.

The Issuer has received acceptable bids or has entered into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program.

## 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 paying the Series 1997 Note, the costs, not otherwise provided, of the construction and acquisition of the Project, funding a reserve account for the Bonds, and paying certain costs of issuance and related costs, or any of such purposes as shall be specified in the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable bonds of the Issuer in an aggregate principal amount not to exceed \$1,800,000. Said Bonds shall be issued as one bond to be designated "Buffalo Creek Public Service District Sewerage System Revenue Bonds Series 1998 A (West Virginia SRF Program)." The Bond shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding twenty-one (21) years after the date of issuance, and in such amount as shall be set out in Schedule X to the Loan Agreement and the Supplemental Resolution. The Bond shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Bond shall be as set forth on Schedule Y to the Loan Agreement. The Bond shall contain such other terms, provisions, conditions and limitations, all as provided by this Resolution and the Loan Agreement and as the Governing Board of the Issuer shall prescribe by resolution (or by supplemental or amendatory Resolution of said Governing Board as said Governing Board shall determine) adopted in connection with the sale of such Bond.

Section 3.02. Terms of Bond. The Bond shall be payable quarterly on such dates, shall mature on such date 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 Bond shall be payable as to principal at the principal 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 on the Bond shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner thereof, interest on the Bond may be paid by wire transfer or other methods satisfactory to the Issuer, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Bond shall be issued in the form of a single bond, fully registered to the Authority, with a record of

advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreement and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder for other fully registered Bond in aggregate principal amount equal to the amount of said Bond then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bond; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of bonds may be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bond shall be dated as of the date specified in said Supplemental Resolution and shall bear interest from such date.

Section 3.03. Additional Terms of Bond. In addition to the terms set forth in Sections 3.01 and 3.02 hereof and in anticipation of the sale of the Bonds to the Authority, the District covenants that the Bonds shall comply in all respects with the provisions of the Loan Agreement and of any resolution of the Authority and/or DEP.

Section 3.04. Execution of Bonds. The 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 any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 1998 A Bond has not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bond shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.05. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.11, 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 Resolution. The Certificate of Authentication and Registration on any 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 3.06. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bond shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bond shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bond shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain Outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The 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 Bond or transferring the Bond is exercised, the Bond shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Bond, 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 obligated to make any such exchange or transfer of the Bond during the period commencing on the fifteenth day of the month preceding an interest payment date on the Bond or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of the Bond to be redeemed, and ending on such interest payment date or redemption date.

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and 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 proof of its ownership thereof and 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 canceled 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.

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

Section 3.08. Bonds not to be Indebtedness of the Issuer. The 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 and amounts, if any, in the Reserve Account. No Holder or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Bonds or the interest thereon.

Section 3.09. Bonds Secured by Pledge of Net Revenues; Lien Position. The payment of the debt service on all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the lien on such Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 1998 A Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and in the Renewal and Replacement Fund hereinafter established or continued and to make the payments requested by this Resolution and the Prior Resolutions, and are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 3.10. Delivery of Bonds. The Issuer shall execute and deliver the Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Bonds to the Authority upon receipt of the documents set forth below:

- A. A request and authorization to the Bond Register on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Bonds to the Authority;
- B. An executed and certified copy of the Bond Resolution;
- C. An executed copy of the Loan Agreement; and

D. The unqualified approving opinion of bond counsel on the Bonds.

Section 3.11. Form of Series 1998 A Bond. The text of the Series 1998 A Bond 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 Left Blank.]

[Form of Series 1998 A Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BUFFALO CREEK PUBLIC SERVICE DISTRICT  
SEWERAGE SYSTEM REVENUE BOND, SERIES 1998 A

No. AR-1

\$1,800,000

KNOW ALL MEN BY THESE PRESENTS: That BUFFALO CREEK PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Logan 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 Eight Hundred Thousand and no/100 Dollars (\$1,800,000), 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 installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year, commencing \_\_\_\_\_, 1999, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate of two percent (2%) per annum as set forth on said Exhibit B. The SRF Administrative Fee (as defined in the hereinafter described Bond Resolution) shall also be payable quarterly on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December of each year, commencing \_\_\_\_\_, 1999, as set forth on Exhibit B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, 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 Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated \_\_\_\_\_, 1998, among the Authority, the DEP and the Issuer.

This Bond is issued in the aggregate principal amount of \$1,800,000 (i) to pay the Series 1997 Note as defined in the Resolution, (ii) to pay the costs of acquisition and construction of certain improvements and extensions to the existing sewerage system of the Issuer (the "Project"), (iii) to fund the debt service reserve fund and (iv) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Resolution duly enacted by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1998, and a Supplemental Resolution adopted by the Issuer on the \_\_\_ day of \_\_\_\_\_, 1998 (collectively called the "Resolution"), and is subject to all the terms and conditions thereof. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE SEWER REVENUE BONDS, SERIES 1990 A DATED JULY 24, 1990, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$438,497, THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 A DATED MARCH 26, 1996, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$110,000, AND THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED MARCH 26, 1996, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$152,100 (the "Prior Bonds").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Resolution) 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 and moneys in the Reserve Account created under the Resolution and unexpended proceeds of the Bond (the "Bond Proceeds"). Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside 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 or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond Proceeds. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest, if any, on all obligations on a parity with or prior to the Bonds including the Prior Bonds payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the

maximum amount of principal and interest which will become due on said Bond in the then current year or any succeeding year and the reserve account for any other obligations outstanding on a parity with the Bond including the Prior Bonds is funded at an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Resolution, only upon the books of \_\_\_\_\_, as registrar (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, shall be applied solely to the payment of the costs of the Project described in the Resolution, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the 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 in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of 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 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 and interest on this Bond.

All provisions of the Resolution, 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, BUFFALO CREEK 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 \_\_\_\_\_, 1998.

[SEAL]

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

126455

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1998 A Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 1998

\_\_\_\_\_  
as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

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Amount	Date	Amount	Date
(1) \$		(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	

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Total \$ \_\_\_\_\_

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.12. Sale of Original Bonds; Ratification and Execution of Loan Agreement with Authority and DEP. The 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 and the Secretary is directed to affix the seal of the Issuer thereto, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery of the Loan Agreement is hereby authorized, ratified and approved.

Section 3.13. Certificate of Consulting Engineers. Prior to the issuance of the Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement 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 DEP and the Authority, the Project is adequate for the purposes for which it was designed, and the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project.

Section 3.14. "Amended Schedule A" Filing. Within 60 days following the completion of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor.

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ARTICLE IV

[RESERVED]

## ARTICLE V

### SYSTEM REVENUES AND APPLICATION THEREOF

#### Section 5.01. Establishment of Funds and Accounts with Depository Bank.

The following special funds or accounts are created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other (or continued pursuant to the Prior Resolutions):

- (1) Revenue Fund (established by the Prior Resolutions); and
- (2) Renewal and Replacement Fund (established by the Prior Resolutions); and
- (3) Series 1998 A Bond Construction Trust Fund.

#### Section 5.02. Establishment of Funds and Accounts with Commission.

The following special funds or accounts are hereby established with the Commission:

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

#### 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 created pursuant to Section 5.01 of the Prior Resolutions and which is continued hereby. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner therein and herein provided. As long as the Prior Bonds are Outstanding, the Issuer shall make the payments required by the Prior Resolutions and simultaneously make the payments set forth hereinafter.

- (1) The Issuer shall, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.
- (2) The Issuer shall first, on the first day of each month simultaneously with the payments required by Section 5.03(A)(2) of the

Series 1990 A Resolution, and Section 5.03(A)(2) of the Series 1996 Resolution for the payment of interest, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Bond Sinking Fund, a sum equal to 1/3rd of the amount of interest which will mature and become due on said Bond on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month simultaneously with the payments required by Section 5.03(A)(B) of the Series 1990 A Resolution, and Section 5.03(A)(3) of the Series 1996 Resolution for the payment of principal, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Bond Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said Bond 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 Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

The Issuer shall complete the "Monthly Payment Form," the form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its remittance check to the Authority by the 5th day of such calendar month.

(4) The Issuer shall next transfer from the Revenue Fund and pay to the Commission the amounts required, on the first day of each month, commencing 3 months prior to the first date of payment of principal of the Bond and simultaneously with the payments required by Section 5.03(A)(4) of the 1990 A Resolution and Section 5.03(A)(4) of the Series 1996 Resolution, if not fully funded upon issuance of the Bond, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Reserve Account, an amount equal to 1/120 of the Reserve Requirement; provided, that no further payments

shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement.

(5) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account (such amount to be inclusive with Section 5.03(A)(5) of the 1990 A Resolution and Section 5.03(A)(5) of the Series 1996 Resolution and not in addition to). All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bond as the same shall become due. Moneys in the Reserve Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Bond, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on moneys in the Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Sinking Fund.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to an amount below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Fund for payment of debt service on the Bond have been made in full.

B. As and when additional Bonds ranking on a parity with the Original Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in an amount equal to the Reserve Requirement.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution. If required by the Authority at any time, the Issuer shall make the necessary arrangements whereby required payments into the Series 1998 A Bonds Sinking Fund, including the Reserve Account therein, shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required hereunder.

Moneys in the Reserve Account shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

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

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Account therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the Issuer.

D. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank shall require such additional sums as shall be necessary to pay any Depository Bank's charges then due.

The Issuer shall also remit from the Revenue Fund to the Authority, on such dates as the Authority and the DEP shall require, the Issuer's allocable share of reasonable administrative expenses of the Authority relating to the Program, if any.

E. The moneys in excess of the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund 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.

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

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

I. The Issuer shall each month, on the day set forth in Section 5.03A(2) hereof (if such day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

Section 5.04. Excess Bond Proceeds. If thirty days following the Completion Date of the Project the Issuer has not requested and received the full amount of the bond proceeds and the Issuer did not fund the Reserve Account to the Reserve Requirement at the closing, then the Issuer shall requisition the remaining balance of the Bond proceeds (to the extent that it does not exceed 10% of the total proceeds of the bonds) with instructions for such requisition to be disbursed to its Reserve Account at the West Virginia Municipal Bond Commission.

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(2) A certificate, signed by the Chairman and the Consulting Engineers, stating:

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

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

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

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

In case any contract provides for the retention of a portion of the contract price, the Issuer shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Construction Trust Fund, including any accounts therein, 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 set forth in this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bond as if they were set forth in full in this Resolution. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the owners of the Bond 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 said Bonds, or the interest thereon, is Outstanding and unpaid.

Section 7.02. Bond not to be Indebtedness of the Issuer. The Bond 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 Resolution. No Holder or Owners of any Bond shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bond or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues: Lien Position. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System on a parity with the lien on such Net Revenues in favor of the Prior Bonds. The Revenues derived from the System, in an amount sufficient to pay the principal of the Bond, herein authorized and to make the payments into the Sinking Fund, including the Reserve Account therein, and all other payments provided for in the Prior Resolution and this Resolution are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in this Resolution.

Section 7.04 Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the Order of the Public Service Commission of West Virginia entered October 1, 1998, (Case No. 97-0694-PSD-CN), and such rates are hereby adopted.

Section 7.05. Sale of the System. Except as otherwise required by law and the terms of the Prior Resolution, 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 or redeem at or prior to maturity all the Bonds and

Bonds Outstanding, or to effectively defease this Resolution in accordance with Sections 10.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Commission for deposit in the appropriate Sinking Funds, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds about to mature and to the redemption prior to maturity at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall, upon receipt of approval of the Registered Owners, if needed, be remitted by the Issuer to the Commission for deposit in the appropriate Sinking Fund and shall be applied only to the purchase or redemption of Bonds of the last maturities then Outstanding at prices not greater than the applicable redemption price, or, if not redeemable, par, or otherwise in the Renewal and Replacement Fund. The payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Resolution.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts

received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay or redeem prior to maturity all Bonds then Outstanding without the prior approval and consent in writing of the Owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66 2/3%) in amount of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners 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. So long as any of the Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that Parity Bonds may be issued as provided for in Section 7.07 hereof. All obligations hereafter issued by the Issuer payable from the revenues of the System, except such Parity Bonds, shall contain an express statement that such obligations are junior and prior, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such prior obligations shall be issued unless all payments required to be made into the Reserve Account and the Renewal and Replacement Fund at the time of the issuance of such prior obligations have been made and are current.

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

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be issued for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07 Parity Bonds. A. No Parity Bonds payable out of the Net Revenues of the System may be issued without the prior written consent of the Authority and DEP. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

No Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions, additions, betterments or improvements to

the System or refunding the entirety of one or more issues or series of bonds or both such purposes.

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 Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year 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 three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Secretary prior to the issuance of such additional Parity Bonds.

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

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate acquisition or construction of such

extensions, additions, betterments or improvements to the System which are to be financed by such Parity Bonds.

All the covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Original Bonds and the owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Bonds, regardless of the time or times of their issuance shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds created in this Resolution required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Resolution.

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

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

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

With the written consent in advance of the Authority and DEP and anything to the contrary in this Section 7.07 notwithstanding, Parity Bonds may be authorized and issued by the Issuer pursuant to Supplemental Resolution solely to complete the Project as described in the Issuer's Program application to the Authority and DEP in accordance with the plans and specifications, in the event that the Original Bonds should be insufficient,

together with other funds lawfully available therefor, to pay all costs of acquisition and construction of the Project; provided, however, that, prior to the issuance of such Parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the Secretary a certificate to the effect that additional funds are necessary for such purpose. All such Parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such Parity Bonds shall be in years and amounts suggested by the Authority.

Section 7.08. Books, Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, 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 DEP 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 Agreement or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation 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 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 owner of a Bond or Bonds issued pursuant to the Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the PSC and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the Issuer. The Issuer 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 Issuer shall be reported to such agent of the Issuer as the Council shall direct.

The Issuer shall file with the Consulting Engineers and the Authority and DEP, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Resolution, and shall submit said report to the Authority and the DEP. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the Loan Agreement and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

The Issuer shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report, the form of which is attached to the Loan Agreement as Exhibit B and is incorporated herein by reference, and forward a copy by the 10th of each month to the Authority and the DEP.

The Issuer shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the Issuer's construction schedule.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, 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 DEP, 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 Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to issuance of the Original Bond, equitable rates or charges for the use of and service rendered by the System will 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 said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bond to finance the issuance of the Bond as the purchaser thereof shall require. 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 (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bond; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and is funded at least at the requirement provided for in the Resolution, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bond.

The Issuer hereby adopts the rates and charges set forth in the PSC Order and attached hereto as Exhibit C and incorporated herein by reference.

Section 7.10. Operating Budget: Audit 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 and the DEP within thirty days of the 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 the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an independent certified public accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Resolution, the Act and the Loan Agreement and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Commencing on the Closing Date and for 2 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 as Exhibit B, and forward a copy of such report to the Authority by the 10th day of each month.

Section 7.11. Consulting Engineers. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP 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. Such resident engineer shall certify to the Authority, the DEP and the Issuer 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. The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a Performance Certificate, the form of which is attached as Exhibit A to the Loan Agreement, and is incorporated herein by

reference, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

Section 7.12. No Competing Franchise. To the extent allowable by law, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Issuer further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

**Section 7.14. No Free Services.** The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or himself or herself 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. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. 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.** The Issuer will carry such insurance and in such amounts as is customarily carried 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, LIGHTING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, and all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) 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.

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.

Section 7.16. Mandatory Connection. The mandatory use of the System is essential and necessary to protect and preserve the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matter from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be

adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain 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 necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The Issuer shall use the Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as local governmental activity of the Issuer.

B. PRIVATE ACTIVITY BOND COVENANT. The Issuer shall not permit at any time or times any of the proceeds of the Bond or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bond from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bond as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bond.

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

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

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

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

Section 7.19. Statutory Mortgage Lien. For the further protection of the Bondholders, 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 Bond and shall be for the benefit of all Owners of the Bonds. This lien is on a parity with the lien of the Prior Bonds.

Section 7.20. Completion, Operation and Maintenance; Schedule of Cost. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreement and to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 7.21. Securities Law 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 (17CFR Part 240).

## ARTICLE VIII

### INVESTMENT OF FUNDS: NON-ARBITRAGE

**Section 8.01. Investments.** Any moneys held as a part of the funds and accounts created by this Resolution, 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 direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

Except as specifically provided herein, 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.

**Section 8.02. Arbitrage.** The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return) with respect to the Bonds so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 8.03. Tax Certificate and Rebate.** The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax

matters as a condition to issuance of the Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

If the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1998 Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay, from any lawful sources available therefor, to the United States such amount, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for any exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Bonds subject to rebate. The Issuer shall also furnish the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

Section 8.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

## 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 Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any 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 Bonds set forth in this Resolution, any Supplemental Resolution or in the 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 Construction Trust Fund Depository Bank, the Bond Registrar, any Paying Agent or a Holder of a Bond; or
- (3) If a default occurs under the Series 1998 A Bond Resolution;
- (4) If a default occurs under the Prior Resolutions; or
- (5) 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 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 this Resolution 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 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 Bonds, and (v) by action at law or bill in equity enjoin any acts in violation of the Resolution with respect to the Bonds, or the rights of such Registered Owners, provided however, that all rights and remedies of the Registered Owners shall be subject to those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under this Resolution and the Act, including 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 default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Resolution other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Issuer of such default, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bond and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the Resolution and the Act.

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

Whenever all that is due upon the Bond and interest thereon and under any covenants of this Resolution 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 Resolution shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bond shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver 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 Bond. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System. The provisions of this section shall be subject to the Prior Resolutions and to the parity rights of the Prior Bonds.

## ARTICLE X

### DEFEASANCE

**Section 10.01. Defeasance of Bonds.** If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of Net Revenues and other moneys and securities pledged under this Resolution and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

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

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Resolution. No material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of sixty-six and two-thirds percent (66 2/3%) or more in principal amount of the 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 out of the revenues of the System without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Resolution may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludibility of interest on the Bonds and the Notes from the gross income of the Owners thereof.

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

Section 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 and the Bond.

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.

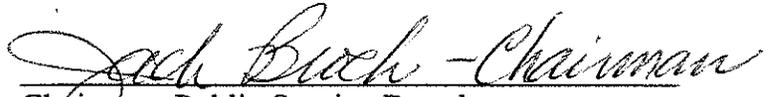
Section 11.05. Conflicting Provisions. All orders or resolutions and parts thereof in conflict with the provisions of this Resolution except for the Prior Resolution, are, to the extent of such conflict, hereby repealed and to the extent that a conflict arises between this Resolution and the Prior Resolution, the more restrictive provision shall prevail.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption 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 11.07. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 13 day of October, 1998.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

  
Chairman, Public Service Board

  
Member, Public Service Board

\_\_\_\_\_  
Member, Public Service Board

CERTIFICATION

Certified as a true copy of a Resolution adopted by the Public Service Board  
of Buffalo Creek Public Service District on the 13 day of October 1998.

Dated: 1-13, 1998.

[SEAL]

  
\_\_\_\_\_  
Secretary, Public Service Board

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

The Buffalo Creek Public Service District treatment plant upgrade project consists of furnishing and installing chlorination and dechlorination equipment, cleaning existing anaerobic digesters; providing new external draft tube digester mixers and boiler system; providing new digester gas safety equipment; installing new cylindrical fine screen, vortex grit removal equipment, and headworks building; and other appurtenant work.

**EXHIBIT B**

**LOAN AGREEMENT**

**(See Tab No. 6)**

**EXHIBIT C**

**SCHEDULE OF RATES**

BUFFALO CREEK PUBLIC SERVICE DISTRICT  
CASE NO. 97-0694-PSD-CN  
APPROVED RATES

Available within the Buffalo Creek Public Service District in Logan County, West Virginia, for single-family, residential and for commercial sewer service.

METERED SERVICE RATE - (Based upon the metered amount of water supplied).  
A monthly service charge of \$3.27, plus a volume charge per 1,000 gallons of \$3.21.

MINIMUM MONTHLY CHARGE

No monthly bill shall be rendered for less than the following charge: \$9.69

UNMETERED SERVICE RATES

Monthly Charge: \$17.72.

CONNECTION FEE

The connection fee to be charged to all new services shall be \$250.00.

DELAYED PAYMENT PENALTY

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

BULK RATE FOR WASTEWATER TREATMENT - TOWN OF MAN

All wastewater from the Town of Man will be treated at the approved rate of \$2.31 per 1,000 gallons of water used, per month.

DISCONNECT/RECONNECT ADMINISTRATION FEES

Whenever water service has been disconnected for non-payment of sewer bills in connection with a water service termination agreement with the Town of Man, a disconnection fee of \$15.00 shall be charged; or in the event the delinquent sewer bill is collected by the water company, an administrative fee of \$15.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with the Town of Man, is reconnected, a fee of \$15.00 shall be charged.

RETURNED CHECK CHARGE

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

INCREMENTAL COST OF WASTEWATER TREATED

\$0.40 per M gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

## SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING THE DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE BUFFALO CREEK PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM REVENUE BOND, SERIES 1998 A, DESIGNATING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; APPROVING THE LOAN AGREEMENT WITH RESPECT TO THE BOND; AND MAKING OTHER PROVISIONS AS TO THE BOND.

WHEREAS, the Public Service Board of the Buffalo Creek Public Service District (the "District") has duly and officially adopted a Bond Resolution on October 13, 1998 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN WASTEWATER COLLECTION AND TREATMENT FACILITIES OF BUFFALO CREEK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN \$1,800,000 IN AGGREGATE PRINCIPAL AMOUNT OF BUFFALO CREEK PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (WEST VIRGINIA SRF PROGRAM) OF THE PUBLIC SERVICE DISTRICT TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE PUBLIC SERVICE DISTRICT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BONDS; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms not otherwise defined shall have the meanings given such terms in the Resolution;

WHEREAS, the Resolution provides for the issuance of the Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A (the "Bond") in aggregate principal amount not to exceed \$1,800,000, in accordance with Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended (the "Act"), and the terms of the Loan Agreement entered into between the District, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment ("DEP") for the Bonds dated September 18, 1998 (the "Loan Agreement"), but requires that the dates, interest rates, maturities, sale prices and other terms of the Bond should be established by a supplemental resolution;

WHEREAS, the Bond is proposed to be purchased by the Authority pursuant to the Loan Agreement;

WHEREAS, the Public Service Board (the "Board") of the District deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal dates of the Bond be fixed hereby in the manner stated herein; that the Loan Agreement be approved; and that other matters relating to the Bond be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE BUFFALO CREEK PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution, the Act, and this Supplemental Resolution, the Bond shall be in the aggregate principal amount of \$1,797,894, with the following provisions:

(A) The Bonds shall be originally issued in the form of a single bond, numbered AR-1 in the principal amount of \$1,797,894. The Bond shall be dated the date of delivery thereof, shall finally mature December 1, 2019, and shall bear interest at the rate of two percent (2%) per annum, commencing December 1, 1999. Both principal of and interest on the Bond are payable quarterly on September 1, December 1, March 1, and June 1 of each year, commencing March 1, 2000. The Bond shall be subject to redemption upon the written consent of the Authority, upon payment of principal, interest and redemption premium, if any, and subject to the other requirements provided in the Loan Agreement, as long as the Authority or DEP shall be the registered owner of the Bond, and shall be payable in installments of principal and interest in the amounts set forth on Schedule Y attached to the Loan Agreement and incorporated therein by reference. The District shall pay the SRF Administration Fee of one percent (1%) per annum as provided in the Resolution and the Loan Agreement.

(B) The Bond shall be executed by Chairman of the Board of the District by his manual signature and attested by the Secretary of the Board of the District by his manual signature and the seal of the District shall be impressed thereon. The seal impressed upon this Resolution is hereby adopted as the official seal of the District. The

Bond shall be sold to the Authority in accordance with the terms of the Loan Agreement at a price equal to 100% of the principal amount thereof.

Section 2. All other provisions relating to the Bond shall be as provided in the Resolution, and the Bond shall be in substantially the form provided in the Resolution with such changes, insertions and omissions as may be approved by the Chairman of the District. The execution of the Bond by the Chairman shall be conclusive evidence of such approval.

Section 3. The District does hereby ratify, approve and accept the Loan Agreement, including the "Schedule X" and "Schedule Y" attached thereto, copies of which are incorporated herein by reference, and the execution and delivery by the Chairman of the Loan Agreement and the performance of the obligations contained therein on behalf of the District have been and are hereby authorized, ratified, approved and directed. The District hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bond shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds will be advanced from time to time as requisitioned by the District.

Section 4. The District hereby appoints and designates Logan Bank & Trust Company, Man, West Virginia, as the Depository Bank, as provided in the Resolution.

Section 5. The District hereby appoints and designates Logan Bank & Trust Company, Man, West Virginia, as Registrar for the Bond and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bond, by and between the District and the Registrar, in substantially the form attached hereto, and the execution and delivery by the Chairman of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the District are hereby authorized, approved and directed.

Section 6. The District hereby appoints and designates the West Virginia Municipal Bond Commission (the "Commission"), Charleston, West Virginia, as Paying Agent for the Bonds.

Section 7. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Bond hereby and by the Resolution approved and provided for, to the end that the Bond may be delivered to the Authority pursuant to the Loan Agreement on or about October 22, 1998.

Section 8. The proceeds of the Bond, as advanced from time to time, shall be deposited in or credited to the Series 1998 A Bond Construction Trust Fund, as received from time to time for payment of Costs of the acquisition and construction of the Project, including costs of issuance of the Bond.

Section 9. The financing of the acquisition and construction of the Project in part with proceeds of the Bond is in the public interest, serves a public purpose of the District and will promote the health, welfare and safety of the residents of the District.

Section 10. The District hereby directs the Depository Bank to initially invest all monies in the funds and accounts established under the Bond Resolution in Qualified Investments as further directed by the District.

Section 11. The District shall not permit at any time or times any of the proceeds of the Bond or any other funds of the District to be used directly or indirectly in a manner which would result in the exclusion of the Bond from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bond as a "private activity bond" within the meaning of the Code. The District will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 12. This Supplemental Resolution shall be effective immediately upon adoption.

Dated: October 13, 1998

BUFFALO CREEK PUBLIC SERVICE DISTRICT

  
Chairman

[SEAL]

  
Secretary

CHASFS3:127168



**BUFFALO CREEK PUBLIC SERVICE DISTRICT**

**\$1,797,894 Sewerage System Revenue Bond, Series 1998 A**

**SELECTED EXCERPT FROM MINUTES  
ON ADOPTION OF BOND  
RESOLUTION AND SUPPLEMENTAL RESOLUTION**

I, Terry Jude, Secretary of the Public Service Board of Buffalo Creek Public Service District, hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the said Public Service Board which meeting was held on October 13, 1998, pursuant to its Rules of Procedure, at the District's Office at 5:00 p.m., prevailing time:

Present: Jack Brock - Chairperson, Public Service Board; and

Terry Jude - Secretary and Member, Public Service Board.

Also present were Chris Callas, Jackson & Kelly, Bond Counsel, Edward I. Eiland, Esquire, Counsel to the District and Gary Ellis, from Logan Bank & Trust Company.

Jack Brock, Chairperson, presided and Terry Jude 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.

**Bond Matter Excerpt**

“The Chairman presented a Bond Resolution for the Series 1998 A Bond in writing entitled:

**RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN WASTEWATER COLLECTION AND TREATMENT FACILITIES OF BUFFALO CREEK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN \$1,800,000 IN AGGREGATE PRINCIPAL AMOUNT OF BUFFALO CREEK PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (WEST VIRGINIA SRF PROGRAM) OF THE**

1998 A (WEST VIRGINIA SRF PROGRAM) OF THE PUBLIC SERVICE DISTRICT TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE PUBLIC SERVICE DISTRICT WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO FINANCE THE COST OF SUCH ACQUISITION AND CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BONDS; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion of Jack Brock, seconded by Terry Jude, it was unanimously ordered that said Bond Resolution be adopted and be in full force and effect on and from the date thereof.

Thereupon, the Chairman presented a Supplemental Bond Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING THE DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE BUFFALO CREEK PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM REVENUE BOND, SERIES 1998 A, DESIGNATING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; DESIGNATING OFFICERS FOR CLOSING; APPROVING THE LOAN AGREEMENT WITH RESPECT TO THE BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

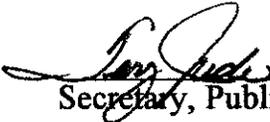
and caused the same to be read and there was discussion. Thereupon, on motion of Jack Brock, seconded by Terry Jude, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date thereof.”

Copies of the Bond Resolution and Supplemental Resolution are attached and incorporated in the official minutes.

I hereby certify that the foregoing actions of said Public Service Board remain in full force and effect and has not been amended or appealed.

WITNESS my signature on this 22nd day of October, 1998.

[SEAL]

  
Secretary, Public Service Board

CHASFS3:127175

I, Rhonda Maynard, Classified Manager 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 dates:

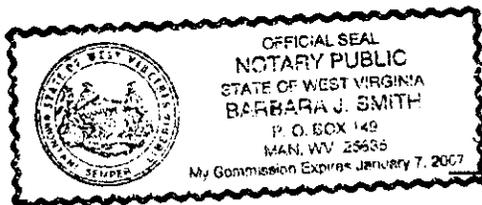
October 2, 1998

Given under my hand this 12th day of October, 1998

*Rhonda Maynard*  
CLASSIFIED MANAGER

State of West Virginia  
County of Logan, to-wit:

Subscribed and sworn before me this 12th day of October, 1998



*Barbara J. Smith*  
NOTARY PUBLIC

Cost of Publication: \$14.11

**COPY OF PUBLICATION**

NOTICE OF SPECIAL MEETING OF THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

The Buffalo Creek Public Service District (the "District") will hold a special meeting at 5:00 p.m., prevailing time, on Tuesday, October 13, 1998, at its offices at Rt. 16, Fanco, West Virginia, for the purpose of acting on a bond resolution and supplemental resolution and any other matters relating to the proposed not to exceed

\$1,800,000 Buffalo Creek Public Service District Sewerage System Revenue Bonds, Series 1998 A which Project will improve and upgrade the sewerage system of the District. The meeting is open to the public.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By: Terry Jude,  
Secretary - Treasurer



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: October 1, 1998

CASE NO. 97-0694-PSD-CN

BUFFALO CREEK PUBLIC SERVICE DISTRICT,  
a public utility.

Application for a certificate of convenience and necessity to rehabilitate the digesters and to upgrade the headworks at its sewage treatment plant located one-half mile from Man, Logan County, and to include chlorination and dechlorination facilities and to implement an inflow and infiltration control program.

RECOMMENDED DECISION

On April 7, 1998, the Buffalo Creek Public Service District (District), a public utility, filed an application for a certificate of convenience and necessity to rehabilitate the digesters and to upgrade the headworks at its sewage treatment plant located one-half mile from Man, Logan County; to include chlorination and dechlorination facilities; to implement an inflow and infiltration control program; and for approval of certain rates and charges.

By Order dated April 7, 1998, the District was required to publish a Notice of Filing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Logan County, in accordance with the provisions of West Virginia Code §24-2-11. The Notice of Filing provided that anyone desiring to make objection to the application must do so, in writing, within thirty (30) days after the publication of the notice.

On May 8, 1998, the District filed a supplemental application for its certificate of convenience and necessity.

By Order dated May 20, 1998, the District was ordered to publish an amended Notice of Filing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Logan County. Said Order provided that anyone wishing to make objection to the application must do so, in writing, within thirty days after the publication of the notice.

On June 2, 1998, the District submitted the affidavit of publication reflecting that publication of the amended Notice of Filing had been made, in accordance with the Commission's requirements, with the date of

publication in The Logan Banner being May 26, 1998. No protests were received to the application within the 30-day protest period, or as of the date of this order.

On August 6, 1998, Commission Staff filed its Final Joint Staff Memorandum recommending approval of the certificate application and certain specified rates and charges. Since the Staff-recommended rates did not contain a required leak adjustment provision, by Order dated August 13, 1998, Staff was ordered to calculate a leak adjustment rate for inclusion in its recommended tariff in this case.

This project, while not providing service to any new customers, will improve the quality of service to its existing customers. The project, as revised, is estimated to cost approximately \$1,797,894, as follows:

Construction	\$1,519,950
Engineering	71,949
Legal & Administrative	3,000
Financing Costs	42,000
Bond Counsel	8,000
Contingencies	<u>152,995</u>
Total revised project cost	\$1,797,894

The District will finance the revised project entirely through a State Revolving Fund (SRF) loan of \$1,797,894. The loan will accrue at an interest rate of 2%, plus a 1% administrative fee, for a term of 20 years. The annual debt requirement will be approximately \$119,653. The District, as a result of this loan, is required to fund both a debt reserve and a renewal and replacement reserve. The debt reserve is equal to 10% of the annual debt payment, or \$11,965, per year. The renewal and replacement reserve is equal to 2.5% of the operating revenues, which will be approximately \$3,770 per year. Staff explained that written confirmation for the SRF loan amount was submitted with the District's revised application.

Staff further explained that, in association with this project, the District has proposed increasing its rates and charges by 55%. However, it proposed to increase the bulk rate for wastewater treatment charged to the Town of Man by 77%. These respective rates and charges must be increased equally, unless disparate treatment is justified by a class cost of service study, which was not performed in this case. Staff noted that the District's proposed minimum and unmetered charges are not exactly in proportion with the proposed service and volume charges. Therefore, the minimum monthly charge based on 2,000 gallons should be \$9.69, rather than \$9.67, and the unmetered monthly charge based on 4,500 gallons should be \$17.72 rather than \$17.67. Although these minor rate revisions result in higher respective minimum and unmetered charges than those published, Staff recommended approval of the project, including the Staff's de minimis revisions to the rate increases, since the project is necessary and the District will be financially in a position to support this project.

Based upon its review of the information provided by the District in its certificate application, as amended, Staff recommended that the certificate application be approved with the minor de minimis changes noted

to the District's proposed minimum and unmetered charges. Staff opined that the need for this project has been adequately documented by the project engineer, HNTB, Inc. According to the engineering design report submitted with the certificate application, this project has been mandated by the West Virginia Division of Environmental Protection through WV/NPDES Permit No. WV0038351 and Order No. 3434, issued on September 28, 1993. The original plans and specifications for this project were approved by the West Virginia Division of Environmental Protection on May 26, 1998. Technical Staff's review of the plans and specifications did not reveal any conflicts with the Public Service Commission rules and regulations concerning engineering requirements.

On August 31, 1998, Staff Attorney Cecelia Jarrell filed a Joint Staff Memorandum to which was attached the Internal Memorandum of Mr. William A. Nelson, Utilities Analyst, and Mr. Joseph A. Marakovits, Technical Analyst, both of the Water and Wastewater Division. Staff had calculated a leak adjustment rate of \$0.40 per 1,000 gallons to be included in the Staff-recommended tariff. In addition, Staff included a surcharge for storm water, which the District had requested, but had been inadvertently overlooked by Staff in its recommendation in this case.

Since inclusion of the Staff-recommended surcharge for storm water collection would require that further notice be given to the public, by Order dated September 9, 1998, the District was given 10 days in which to advise the Administrative Law Judge whether the District desired to publish the Staff-recommended provision for a surcharge for roof drains to be included in its tariff or withdraw its request for this provision and proceed with the certificate application, which could be approved as unopposed.

On September 11, 1998, the District, by counsel, filed a letter indicating that the District did not want to pursue the storm water surcharge at this time.

#### FINDINGS OF FACT

1. On April 7, 1998, the Buffalo Creek Public Service District filed an application for a certificate of convenience and necessity to make various improvements to its sewage treatment plant, including rehabilitating the digesters, upgrading the headworks, installing chlorination and dechlorination facilities and implementing an inflow and infiltration control program. A supplemental application was filed on May 8, 1998, stating an estimated cost of \$1,797,894. (See applications filed April 7, 1998, and May 8, 1998).

2. By Order dated May 20, 1998, the District was ordered to publish an amended Notice of Filing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Logan County. Said Order provided that anyone desiring to make objection to the application must do so, in writing, within thirty days after the date of publication. (See Order dated May 20, 1998).

3. On June 2, 1998, the District filed the proper affidavit of publication reflecting that publication of the Amended Notice of Filing had been made in accordance with the Commission's requirements, in The Logan Banner, with the date of publication being May 26, 1998. No protest was received to the application within the thirty-day protest period, or as of the date of this Order. (See, affidavit filed June 2, 1998; case file generally).

4. Commission Staff explained that the District's improvements to its sewage treatment plant would have an estimated cost of \$1,797,894. Staff recommended approval of the District's application since the District has received written confirmation of its SRF loan; the project does not violate any of the Commission's rules and regulations; and the project has been mandated by the West Virginia Division of Environmental Protection through WV/NPDES Permit No. WV 0038351 and Order No. 3434, issued on September 28, 1993. Staff made de minimis adjustments to the District's requested minimum charge based on 2,000 gallons from \$9.67 to \$9.69, and to the requested unmetered charge based on 4,500 gallons from \$17.67 to \$17.72, which would not require further publication. (See, Final Joint Staff Memorandum filed August 6, 1998).

#### CONCLUSIONS OF LAW

The Administrative Law Judge is of the opinion and finds that:

1. Public convenience and necessity requires the proposed project to make the proposed improvements to the District's sewage treatment plant, which were mandated by the West Virginia Division of Environmental Protection through WV/NPDES Permit No. WV 0038351 and Order No. 3434, issued on September 28, 1993.

2. The proposed financing, consisting of an SRF loan of \$1,797,894 is reasonable and should be approved.

3. Staff's recommendation that the District's proposed minimum charge based on 2,000 gallons be increased by \$.02 and that the District's proposed unmetered charge based on 4,500 gallons be increased by \$.05 is such a de minimis increase as not to require further publication of the rates in this case.

4. The application for a certificate of convenience and necessity to make improvements in the sewage treatment facilities of the Buffalo Creek Public Service District should be approved.

#### ORDER

IT IS, THEREFORE, ORDERED that the application of the Buffalo Creek Public Service District, filed on April 7, 1998, for a certificate of convenience and necessity to make various improvements to its sewage treatment plant, including rehabilitating the digesters, upgrading the headworks, installing chlorination and dechlorination facilities and

implementing an inflow and infiltration control program, at a cost of \$1,797,894, be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing, consisting solely of a State Revolving Fund loan of \$1,797,894, at an interest rate of 2%, plus a 1% administrative fee, for a term of 20 years, be, and the same hereby is, approved.

IT IS FURTHER ORDERED that, if there are any changes in the plans, scope, terms or financing of the project, the District must obtain Commission approval of these changes prior to commencing construction.

IT IS FURTHER ORDERED that the rates and charges set forth on Appendix A to this Order, be, and the same hereby are, approved for use by the District on and after the date that this Order becomes final.

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

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

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

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

  
Robert W. Glass  
Administrative Law Judge

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APPENDIX A

BUFFALO CREEK PUBLIC SERVICE DISTRICT  
CASE NO. 97-0694-PSD-CN  
APPROVED RATES

Available within the Buffalo Creek Public Service District in Logan County, West Virginia, for single-family, residential and for commercial sewer service.

METERED SERVICE RATE - (Based upon the metered amount of water supplied).

A monthly service charge of \$3.27, plus a volume charge per 1,000 gallons of \$3.21.

MINIMUM MONTHLY CHARGE

No monthly bill shall be rendered for less than the following charge: \$9.69

UNMETERED SERVICE RATES

Monthly Charge: \$17.72.

CONNECTION FEE

The connection fee to be charged to all new services shall be \$250.00.

DELAYED PAYMENT PENALTY

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

BULK RATE FOR WASTEWATER TREATMENT - TOWN OF MAN

All wastewater from the Town of Man will be treated at the approved rate of \$2.31 per 1,000 gallons of water used, per month.

DISCONNECT/RECONNECT ADMINISTRATION FEES

Whenever water service has been disconnected for non-payment of sewer bills in connection with a water service termination agreement with the Town of Man, a disconnection fee of \$15.00 shall be charged; or in the event the delinquent sewer bill is collected by the water company, an administrative fee of \$15.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with the Town of Man, is reconnected, a fee of \$15.00 shall be charged.

RETURNED CHECK CHARGE

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

INCREMENTAL COST OF WASTEWATER TREATED

\$0.40 per M gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.



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 5th day of October, 1998.

CASE NO. 97-0694-PSD-CN

**BUFFALO CREEK PUBLIC SERVICE DISTRICT**

Application for a certificate of convenience and necessity to rehabilitate the digesters and to upgrade the headworks at its sewage treatment plant located one-half mile from Man, Logan County, and to include chlorination and dechlorination facilities and to implement an inflow and infiltration control program.

COMMISSION ORDER  
WAIVING EXCEPTION PERIOD

On October 1, 1998, Administrative Law Judge Robert W. Glass entered a Recommended Decision which, among other things, granted a certificate of convenience and necessity to Buffalo Creek Public Service District in the above styled proceeding.

On October 2, 1998, T. D. Kauffelt, counsel for the District, filed a letter requesting a waiver of the fifteen day period of time in which a party may file exceptions to the Recommended Decision. 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 October 2, 1998, 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  
Executive Secretary

SS/s

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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 6<sup>th</sup> day of October, 1998.

CASE NO. 97-0694-PSD-CN

BUFFALO CREEK PUBLIC SERVICE DISTRICT,  
a public utility, Logan County.

Application for a certificate of convenience and necessity to rehabilitate the digesters and to upgrade the headworks at its sewage treatment plant located one-half mile from Man, Logan County; to include chlorination and dechlorination facilities and to implement an inflow and infiltration control program.

COMMISSION ORDER WAIVING EXCEPTION PERIOD

On April 7, 1998, the Buffalo Creek Public Service District (District) filed an application for a certificate to rehabilitate the digesters and to upgrade the headworks at its sewage treatment plant located one-half mile from Man, Logan County; to include chlorination and dechlorination facilities; to implement an inflow and infiltration control program; and for approval of certain rates and charges.

By Recommended Decision entered October 1, 1998, Administrative Law Judge Robert W. Glass, granted a certificate of convenience and necessity to Buffalo Creek Public Service District to make various improvements to its sewage treatment plant, including rehabilitating the digesters, upgrading the headworks, installing chlorination and dechlorination facilities and implementing an inflow and infiltration program, at a cost of \$1,797,894. Judge Glass approved the proposed financing, consisting solely of a State Revolving Fund loan of \$1,797,894, at an interest rate of 2%, plus a 1% administrative fee, for a term of 20 years.

On October 2, 1998, T. D. Kauffelt, Esq., counsel for Buffalo Creek Public Service District, petitioned the Commission to waive the fifteen day exception period.

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 become 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 therefore of the opinion and belief that said petition for waiver received by the Commission on October 2, 1998, 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 become final (5) days after the date of this order.

A True Copy, Teste:



Sandra Squire  
Executive Secretary

ft



# West Virginia Infrastructure & Jobs Development Council

Public Members:

James D. Williams, Chairman  
St. Albans  
James L. Harrison, Sr., Vice Chairman  
Princeton  
Lloyd P. Adams, P.E.  
Wheeling  
Sheirl L. Fletcher  
Morgantown

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

Susan J. Riggs, Esquire  
Executive Secretary

May 7, 1998

Jack L. Brock, Chairman  
Buffalo Creek Public Service District  
P. O. Box 209  
Amherstdale, WV 25607

Re: Wastewater System Improvements Project 96S-273

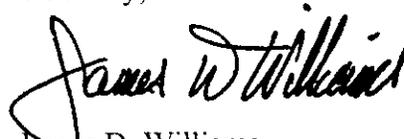
Dear Mr. Brock:

The West Virginia Infrastructure and Jobs Development Council (Council) is in receipt of a letter dated April 30, 1998 from HNTB Corporation which requests, on behalf of Buffalo Creek Public Service District (District), Council approval to pursue a State Revolving Fund (SRF) loan of \$1,714,000 to finance the District's proposed wastewater system project.

The Council, at its May 6, 1998 meeting, reviewed the subject request and is recommending that the District pursue an SRF loan of approximately \$1,714,000 to finance this project. **Please note that this letter does not constitute funding approval from the SRF program.**

If you have any questions regarding this matter, please contact Susan J. Riggs at the above telephone number.

Sincerely,



James D. Williams

JDW/bh

cc: Edward I. Eiland, Esquire  
T. D. Kauffelt, Esquire  
Samme L. Gee, Esquire  
William B. Keaton, E.I.  
Mike Johnson, P. E.



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

## CERTIFICATE OF:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. PUBLIC SERVICE COMMISSION ORDER; RATES
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. LOAN AGREEMENT
12. SPECIMEN BOND
13. CONFLICTS OF INTEREST
14. NO FEDERAL GUARANTY
15. CLEAN WATER ACT
16. BOND PROCEEDS
17. YEAR 2000 COMPLIANCE

We, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board of the Buffalo Creek Public Service District (herein called the "District"), and the undersigned ATTORNEY for the District hereby certify in connection with the single, fully registered Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A, numbered AR-1, dated the date hereof, in the principal amount of \$1,797,894 (herein called the "Bonds"), bearing interest at the rate of two percent (2%) per annum, as follows:

1. **TERMS:** All capitalized words and terms used in this Certificate and not otherwise defined shall have the same meaning as in the Bond Resolution duly adopted by the Public Service Board (the "Board") of the District on October 13, 1998, and a Supplemental Resolution adopted October 13, 1998, relating to the Bonds (collectively, the "Resolution") and the Loan Agreement entered into between the District, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP") for the Bonds, dated September 18, 1998 (the "Loan Agreement").

2. **NO LITIGATION:** To the best of our knowledge, no controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the issuance and delivery of the Bonds, except as hereinafter

discussed; nor questioning the proceedings and authority by which the Board of the District authorized the issuance and sale of the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the District or the title of the members or officers of the District or of the Board thereof to their respective offices; nor questioning the acquisition and construction of certain improvements and extensions to the existing sewerage facilities of the District financed in part by the proceeds of sale of the Bonds (herein called the "Project"), nor operation by the District of the existing sewerage facilities (said existing sewerage facilities and any further extensions, additions, improvements or betterments thereto herein collectively called the "System"), nor challenging the collection or use or pledge of the Net Revenues of the System.

On October 9, 1998, a personal injury civil action styled "Delores Ann Butcher, Plaintiff vs. The Buffalo Creek Public Service District, Defendant, Civil Action No. 98-C-348-P" was instituted in the Circuit Court of Logan County, West Virginia. The complaint failed to state the amount of damages which the plaintiff demands. The District carries liability insurance through the County Commission of Logan County.

3. GOVERNMENTAL APPROVALS: All applicable approvals and certificates required by law for the construction and acquisition of the Project, operation of the System, and issuance of the Bonds have been or will be duly and timely obtained and remain in full force and effect, and competitive bids for construction of the Project were solicited in accordance with Chapter 5, Article 22, Section 1, of the Code of West Virginia, 1931, as amended.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the District since the approval, execution and delivery of the Loan Agreement, and the District has met all conditions prescribed in the Loan Agreement entered into among the District, the Authority and the DEP.

There are outstanding obligations of the District which will rank on a parity with the Bonds as to liens, pledge and source of and security for payment, being the Sewer Revenue Bonds, Series 1990 A issued July 24, 1990 in the aggregate principal amount of \$438,497 (the "Series 1990 A Bonds"), the Sewerage System Revenue Bonds, Series 1996 A and Series 1996 B issued March 26, 1996, in the aggregate principal amounts of \$110,000 and \$152,00, respectively (the "Series 1996 Bonds", and collectively with the Series 1990 A Bonds, the "Prior Bonds"). The District has met the parity requirements of the Prior Resolutions.

Simultaneously with the issuance of the Bonds, the District will pay in full its Sewer Design Note, Series 1997 in the principal amount of \$42,000.

5. SIGNATURES: The undersigned Chairman and Secretary are the duly elected or appointed, qualified and serving officers of the Board of the District as indicated by the official titles opposite their signatures below, and were duly authorized to execute and seal the Bonds for the District. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the District.

6. PUBLIC SERVICE COMMISSION ORDER; RATES: The District hereby certifies that it has filed all information with the Public Service Commission (the "PSC") and taken all other action required to maintain the Recommended Decision in Case No. 97-0694-PSD-CN approving the rates and approving the financing of the Project. The Recommended Decision dated October 1, 1998, became the Final Order on October 11, 1998, is in full force and effect, as opined to by the District's PSC counsel. While the appeal period has not expired prior to the date hereof, the PSC Staff has indicated it will not appeal the Order and the District hereby confirms that it will not appeal said Order. The schedule of the PSC approved rates is attached to the Bond Resolution.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the District is "Buffalo Creek Public Service District," and it is a public corporation organized and existing under the laws of, and a public corporation and political subdivision of, the State of West Virginia in Logan County of said State. The governing body of the District is its Public Service Board, consisting of three (3) members, whose names and dates of commencement and termination of terms of office during these Bond proceedings are as follows:

<u>Name</u>	<u>Title</u>	<u>Date of Termination of Office</u>
Jack Brock	Chairperson	July, 2004
Terry Jude	Member	June, 2003
Jack Garrett	Member	July, 2002

T. D. Kauffelt, Esquire, Charleston, West Virginia, is the duly appointed PSC attorney for the District. Edward I. Eiland, Esquire, Logan, West Virginia, whose signature appears hereon, is the local counsel for the District. Attached hereto as Exhibit A is a copy of the organizational minutes dated January 20, 1998.

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

9. MEETINGS: All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the District in any way connected with the acquisition and construction and financing of the Project were authorized or adopted at meetings of the Board duly and regularly or specially called and held pursuant to all

applicable statutes and the rules of procedure of the Board, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

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

11. **LOAN AGREEMENT:** As of the date hereof, (i) the representations of the District contained in the Loan Agreement are true and correct in all material respects; (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; and (iii) to the best knowledge of the undersigned, no event affecting the District has occurred 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 therein not misleading. The District has notified the Authority and the DEP as to the events that have occurred under paragraph 2 herein.

12. **SPECIMEN BONDS:** Attached hereto as Exhibit B is a specimen of the Bonds which, except as to execution and authentication, is identical in all respects to the Bonds this day delivered to the Authority and being substantially in the form prescribed in the Resolution.

13. **CONFLICTS OF INTEREST:** No officer or employee of the District has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the District and the sale of any land, materials, supplies or services to the District, or to any contractor supplying the District, relating to the Bonds, the authorizing document 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.

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

15. **CLEAN WATER ACT:** The Project as described in the Bond Resolution complies with Sections 208 and 303(e) of the Clean Water Act.

16. **BOND PROCEEDS:** On the date hereof, the District received from the Authority and the DEP the sum of \$89,895, being a portion of the Bonds and more than a de minimis amount of the proceeds of the Bonds. The balance of the principal amount of the Bond will be advanced to the District as requisitioned for costs of the acquisition and construction of the Project.

17. YEAR 2000 COMPLIANCE: The Town represents that it has undertaken or will undertake an investigation to determine whether the operations of the System, including but not limited to any billing, collection and inventory computer programs of the System and any electronic or mechanical components of the System's wastewater collection and treatment facilities, are Year 2000 Compliant. The Town further represents that if it determines as a result of this investigation that any Mission-Critical Component of the System is not Year 2000 Compliant, the Town (i) will take timely and affirmative action to repair or replace any such component, and (ii) will perform adequate testing to ensure the sound operation and Year 2000 Compliant status of the repaired or replaced component. For purpose of this paragraph, "Year 2000 Compliant" means, with respect to the information technology the Town uses or will use in the operation of the System (including any date-sensitive microprocessors embedded in electronic or mechanical components of the System), the information technology is designed to be used prior to, during and after calendar Year 2000 A.D., and the information technology used during each such time period will accurately receive, provide and process date-time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, including the years 1999 and 2000, and leap-year calculations, and will not malfunction, cease to function, or provide invalid or incorrect results as a result of date-time data. For purposes of this paragraph, "Mission-Critical Component" means any component of the System that would be critical to (a) the System's continued operation after January 1, 2000; (b) the Town's ability to continue to bill its customers and collect amounts billed from those customers after January 1, 2000; or (c) the Town's ability to make all principal and interest payments for the Bonds contemplated by the Ordinance as and when they become due.

[Remainder of Page Intentionally Left Blank]

WITNESS our signatures and the official corporate seal of the Buffalo Creek Public Service District on this 22nd day of October, 1998.

[SEAL]

<u>Signature</u>	<u>Official Title</u>
<u>Jack Burk - Chairman</u>	Chairman
<u>Tom Jude</u>	Secretary
<u>Edward J. Eiland</u>	Attorney

EXHIBIT A

(ORGANIZATIONAL MINUTES)

# THE BUFFALO CREEK PUBLIC SERVICE DISTRICT

P. O. BOX 209  
AMHERSTDALE, WEST VIRGINIA 25607

(304) 583-6586

January 20, 1998

## MINUTES

The Public Service Board of Buffalo Creek Public Service District met for its regular monthly meeting on Tuesday, January 20, 1998, at 5:00 p.m. at the office of the District at Braeholm, West Virginia.

The following were present:

Jack L. Brock, Chairman and Board Member  
Terry Jude, Secretary-Treasurer and Board Member  
Jack Garrett, Board Member  
David Crawford, General Manager  
Juanita Harvey, Office Secretary  
Judy McClellan, Office Secretary  
Edward I. Eiland, Attorney for the District

The meeting was called to order by Chairman Jack L. Brock, who presided.

Upon motion by Mr. Garrett and seconded by Mr. Jude, Jack L. Brock was elected chairman of the Board.

Upon motion by Mr. Brock and seconded by Mr. Garrett, Terry Jude was elected Secretary-Treasurer of the Board.

Upon motion by Mr. Brock and seconded by Mr. Jude, the minutes of the regular meeting of December 16, 1997, were approved. They were signed.

EXHIBIT B  
(SPECIMEN BOND)

CHASFS3:127178



"SPECIFIC"

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BUFFALO CREEK PUBLIC SERVICE DISTRICT  
SEWERAGE SYSTEM REVENUE BOND, SERIES 1998 A

No. AR-1

\$1,797,894

KNOW ALL MEN BY THESE PRESENTS: That BUFFALO CREEK PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Logan 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 Seven Hundred Ninety Seven Thousand Eight Hundred Ninety Four Dollars (\$1,797,894), 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 installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year, commencing March 1, 2000, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate of two percent (2%) per annum as set forth on said Exhibit B. The SRF Administrative Fee (as defined in the hereinafter described Bond Resolution) shall also be payable quarterly on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December of each year, commencing March 1, 2000, as set forth on Exhibit B attached hereto.

Interest on this Bond shall be zero percent (0%) from the date hereof to and including November 30, 1999, and after such date, interest shall accrue and be payable on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning March 1, 2000. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, 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 (the "Paying Agent"). The interest on this Bond, if any, is payable by check or draft mailed to the Authority at the address as it appears on the books of Logan Bank & Trust Company, Man, West Virginia (the "Registrar") on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable, so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated September 18, 1998, among the Authority, the DEP and the Issuer.

This Bond is issued in the aggregate principal amount of \$1,797,894 (i) to pay the costs of financing, acquisition and construction of certain improvements and extensions to the existing sewerage system of the Issuer (the "Project"), and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Resolution duly adopted by the Issuer on the 13th day of October, 1998, and a Supplemental Resolution adopted by the Issuer on the 13th day of October, 1998 (collectively called the "Resolution"), and is subject to all the terms and conditions thereof. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE SEWER REVENUE BONDS, SERIES 1990 A DATED JULY 24, 1990, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$438,497, THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 A, DATED MARCH 26, 1996, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$110,000, AND THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 B, DATED MARCH 26, 1996, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$152,100 (THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Resolution) 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 and moneys in the Reserve Account created under the Resolution and unexpended proceeds of the Bond (the

"Bond Proceeds"). Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside 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 or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond Proceeds. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest, if any, on all obligations on a parity with or prior to the Bonds including the Prior Bonds payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on said Bond in the then current year or any succeeding year and the reserve account for any other obligations outstanding on a parity with the Bond including the Prior Bonds is funded at an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Resolution, only upon the books of Logan Bank & Trust Company, Man, West Virginia, as registrar (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, shall be applied solely to the payment of the costs of the Project described in the Resolution, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the 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 in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of 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 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 and interest on this Bond.

All provisions of the Resolution, 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.

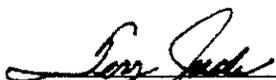
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IN WITNESS WHEREOF, BUFFALO CREEK PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated October 22, 1998.

[SEAL]

  
Chairman

ATTEST:

  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1998 A Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: October 22, 1998

LOGAN BANK & TRUST COMPANY,  
as Registrar

By Charles Gary Elin  
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

---

Amount	Date	Amount	Date
(1) \$89,895.00	October 22, 1998	(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	

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Total \$ \_\_\_\_\_

EXHIBIT B

## SCHEDULE OF ANNUAL DEBT SERVICE

Date	Principal	Coupon	Interest	Total P+i
12/01/1998	-	-	-	-
3/01/1999	-	-	-	-
6/01/1999	-	-	-	-
9/01/1999	-	-	-	-
12/01/1999	-	-	-	-
3/01/2000	18,333.19	2.000%	8,989.47	27,322.66
6/01/2000	18,424.86	2.000%	8,897.80	27,322.66
9/01/2000	18,516.98	2.000%	8,805.68	27,322.66
12/01/2000	18,609.56	2.000%	8,713.09	27,322.65
3/01/2001	18,702.61	2.000%	8,620.05	27,322.66
6/01/2001	18,796.13	2.000%	8,526.53	27,322.66
9/01/2001	18,890.11	2.000%	8,432.55	27,322.66
12/01/2001	18,984.56	2.000%	8,338.10	27,322.66
3/01/2002	19,079.48	2.000%	8,243.18	27,322.66
6/01/2002	19,174.88	2.000%	8,147.78	27,322.66
9/01/2002	19,270.75	2.000%	8,051.91	27,322.66
12/01/2002	19,367.11	2.000%	7,955.55	27,322.66
3/01/2003	19,463.94	2.000%	7,858.72	27,322.66
6/01/2003	19,561.26	2.000%	7,761.40	27,322.66
9/01/2003	19,659.07	2.000%	7,663.59	27,322.66
12/01/2003	19,757.36	2.000%	7,565.30	27,322.66
3/01/2004	19,856.15	2.000%	7,466.51	27,322.66
6/01/2004	19,955.43	2.000%	7,367.23	27,322.66
9/01/2004	20,055.21	2.000%	7,267.45	27,322.66
12/01/2004	20,155.48	2.000%	7,167.18	27,322.66
3/01/2005	20,256.26	2.000%	7,066.40	27,322.66
6/01/2005	20,357.54	2.000%	6,965.12	27,322.66
9/01/2005	20,459.33	2.000%	6,863.33	27,322.66
12/01/2005	20,561.63	2.000%	6,761.03	27,322.66
3/01/2006	20,664.43	2.000%	6,658.23	27,322.66
6/01/2006	20,767.76	2.000%	6,554.90	27,322.66
9/01/2006	20,871.59	2.000%	6,451.06	27,322.65
12/01/2006	20,975.95	2.000%	6,346.71	27,322.66
3/01/2007	21,080.83	2.000%	6,241.83	27,322.66
6/01/2007	21,186.24	2.000%	6,136.42	27,322.66
9/01/2007	21,292.17	2.000%	6,030.49	27,322.66
12/01/2007	21,398.63	2.000%	5,924.03	27,322.66
3/01/2008	21,505.62	2.000%	5,817.04	27,322.66
6/01/2008	21,613.15	2.000%	5,709.51	27,322.66
9/01/2008	21,721.22	2.000%	5,601.44	27,322.66
12/01/2008	21,829.82	2.000%	5,492.84	27,322.66
3/01/2009	21,938.97	2.000%	5,383.69	27,322.66
6/01/2009	22,048.67	2.000%	5,273.99	27,322.66
9/01/2009	22,158.91	2.000%	5,163.75	27,322.66
12/01/2009	22,269.70	2.000%	5,052.96	27,322.66
3/01/2010	22,381.05	2.000%	4,941.61	27,322.66

## EXHIBIT B

## SCHEDULE OF ANNUAL DEBT SERVICE

Date	Principal	Coupon	Interest	Total P+I
6/01/2010	22,492.96	2.000%	4,829.70	27,322.66
9/01/2010	22,605.42	2.000%	4,717.24	27,322.66
12/01/2010	22,718.45	2.000%	4,604.21	27,322.66
3/01/2011	22,832.04	2.000%	4,490.62	27,322.66
6/01/2011	22,946.20	2.000%	4,376.46	27,322.66
9/01/2011	23,060.93	2.000%	4,261.73	27,322.66
12/01/2011	23,176.24	2.000%	4,146.42	27,322.66
3/01/2012	23,292.12	2.000%	4,030.54	27,322.66
6/01/2012	23,408.58	2.000%	3,914.08	27,322.66
9/01/2012	23,525.62	2.000%	3,797.04	27,322.66
12/01/2012	23,643.25	2.000%	3,679.41	27,322.66
3/01/2013	23,761.47	2.000%	3,561.19	27,322.66
6/01/2013	23,880.27	2.000%	3,442.39	27,322.66
9/01/2013	23,999.68	2.000%	3,322.98	27,322.66
12/01/2013	24,119.67	2.000%	3,202.99	27,322.66
3/01/2014	24,240.27	2.000%	3,082.39	27,322.66
6/01/2014	24,361.47	2.000%	2,961.19	27,322.66
9/01/2014	24,483.26	2.000%	2,839.38	27,322.66
12/01/2014	24,605.70	2.000%	2,716.96	27,322.66
3/01/2015	24,728.73	2.000%	2,593.93	27,322.66
6/01/2015	24,852.37	2.000%	2,470.29	27,322.66
9/01/2015	24,976.63	2.000%	2,346.03	27,322.66
12/01/2015	25,101.51	2.000%	2,221.15	27,322.66
3/01/2016	25,227.02	2.000%	2,095.64	27,322.66
6/01/2016	25,353.16	2.000%	1,969.50	27,322.66
9/01/2016	25,479.92	2.000%	1,842.74	27,322.66
12/01/2016	25,607.32	2.000%	1,715.34	27,322.66
3/01/2017	25,735.36	2.000%	1,587.30	27,322.66
6/01/2017	25,864.04	2.000%	1,458.62	27,322.66
9/01/2017	25,993.36	2.000%	1,329.30	27,322.66
12/01/2017	26,123.32	2.000%	1,199.34	27,322.66
3/01/2018	26,253.94	2.000%	1,068.72	27,322.66
6/01/2018	26,385.21	2.000%	937.45	27,322.66
9/01/2018	26,517.13	2.000%	805.52	27,322.65
12/01/2018	26,649.72	2.000%	672.94	27,322.66
3/01/2019	26,782.97	2.000%	539.69	27,322.66
6/01/2019	26,916.88	2.000%	405.78	27,322.66
9/01/2019	27,051.47	2.000%	271.19	27,322.66
12/01/2019	27,186.73	2.000%	135.93	27,322.66
<b>Total</b>	<b>1,797,894.00</b>	<b>-</b>	<b>387,918.77</b>	<b>2,185,812.77 *</b>

\*Plus \$2,424.50 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is \$193,960.

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

## BUFFALO CREEK PUBLIC SERVICE DISTRICT

### **\$1,797,894.00 Sewerage System Revenue Bond, Series 1998 A**

## CERTIFICATE OF CONSULTING ENGINEER

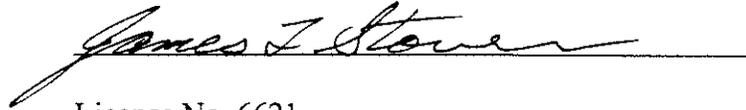
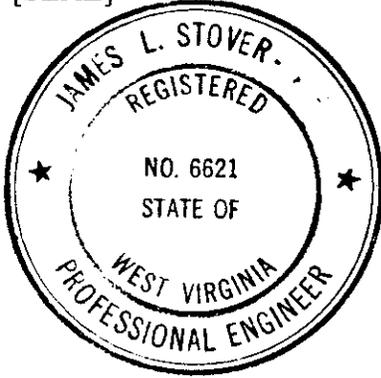
I, James L. Stover, a Registered Professional Engineer, West Virginia License No. 6621, of HNTB Corporation, located at Scott Depot, West Virginia, hereby certify that my firm is engineer for the acquisition and construction of certain additions, improvements and betterments to the existing sewerage system facility (herein called the "Project") for the Buffalo Creek Public Service District (the "District") to be constructed primarily in Logan County, West Virginia, the acquisition and construction are being permanently financed by the above-captioned bonds (the "Series 1998 A Bond") of the District. Capitalized words not defined herein shall have the meaning set forth in the Bond Resolution adopted by the Public Service Board of the District on October 13, 1998, and the Loan Agreement by and between the District, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP") dated September 18, 1998.

The undersigned hereby certifies that to the best of my knowledge, information and belief: (i) my firm will endeavor to determine in general that the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm (including change orders approved by the District) and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project, as designed, is adequate for the purpose for which it was designed and, if constructed and maintained properly, has an estimated useful life of at least twenty-two years, (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 described in the Application and my firm has ascertained, or will ascertain prior to construction, that the Project's prime contractor has provided evidence that it is compliance with the insurance and payment and performance bond requirements, as set forth in the Project's contract documents and that such prime contractor's insurance policies or binders and such bonds have been, or will be, verified by my firm for accuracy, (iv) 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, (v) in reliance solely upon the opinion of Jeff Vallet, certified public accountant, the rates and charges for the System as adopted by the Public Service Board of the Issuer and approved by the Public Service Commission of West Virginia are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) 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 as bid and as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 22<sup>nd</sup> day of October, 1998.

HNTB Corporation

[SEAL]

A handwritten signature in cursive script, reading "James L. Stover", written over a horizontal line.

License No. 6621

SCHEDULE A -(Revised)

NAME OF GOVERNMENTAL AGENCY:

Buffalo Creek Public Service District

**ESTIMATED COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING**

**A. Cost of Project**

**Total**

1. Construction (Based on Actual Bids)	<u>\$1,519,950.00</u>	
2. Technical Services	<u>\$153,730.00</u>	
3. Legal & Fiscal	<u>\$0.00</u>	
4. Administrative	<u>\$3,000.00</u>	
5. Financing Costs <b>(CRISIS PROJECT)</b>	<u>\$42,000.00</u>	
6. Sites, Easements & R.O.W	<u>\$0.00</u>	
7. Interim Financing Costs	<u>\$0.00</u>	
8. Contingency (10%)	<u>\$71,214.00</u>	
9. Total of Lines 1 through 8		<u><b>\$1,789,894.00</b></u>

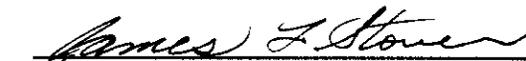
**B. Sources of Funds**

10. Federal Grants <sup>1</sup>		
a. USGS Grant	<u>\$0.00</u>	
11. State Grants <sup>1</sup>		
a. Infrastructure Fund Econ. Devel.	<u>\$0.00</u>	
12. Other Grants <sup>1</sup>	<u>\$0.00</u>	
13. Any Other Source. <sup>2</sup>	<u>\$0.00</u>	
14. Total of Lines 10 through 13		<u>\$0.00</u>
15. Net Proceeds Required From Bond Issue (Line 9 minus Line 15)		<u><b>\$1,789,894.00</b></u>

**C. Cost of Financing**

16. Capitalized Interest	<u>\$0.00</u>	
17. Funded Reserve Account <sup>3</sup>	<u>\$0.00</u>	
18. Other Costs <sup>4</sup>		
a. Bond Counsel	<u>\$8,000.00</u>	
19. Total Cost of Financing (Lines 17 and 18)	<u>\$8,000.00</u>	
20. Size of Bond Issue (Line 16 plus Line 19)		<u><b>\$1,797,894.00</b></u>

  
GOVERNMENTAL AGENCY

  
CONSULTING ENGINEER

DATE: 10/22/98

DATE: 10-22-98

1. Attach supporting documentation, if available. If not yet available state such.
2. Include the proceeds of any parity or subordinate bond issue to be used for such purposes and attach documentation.
3. Consult with bond counsel and the Authority before assuming a funded reserve.
4. For example, fees of accountants, bond counsel, and local counsel for the Governmental Agency.



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

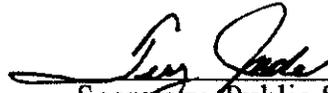
CERTIFICATE OF SECRETARY AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

I, the undersigned Terry Jude, Secretary of the Public Service Board (the "Board") of Buffalo Creek Public Service District (the "District"), hereby certify that the copies of the following documents being delivered in connection with the closing of the Buffalo Creek Public Service District's sale of \$1,797,894 Sewerage System Revenue Bond, Series 1998 A (the "Series 1998 A Bond"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the District and delivered in the transcript of proceedings, that said documents have been duly adopted or entered by the Board, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Rules of Procedure.
2. Order of The County Commission of Logan County (the "County Commission") creating the District.
3. Orders of the County Commission appointing current Board members.
4. Oaths of Office of Board members.
5. Loan Agreement for the Series 1998 A Bond, dated September 18, 1998.
6. Excerpts from the minutes of the October 13, 1998, meeting of the Board, wherein the Bond Resolution and the Supplemental Resolution with respect to the Series 1998 A Bond were adopted.
7. Bond Resolution.
8. Supplemental Resolution.
9. Recommended Decision of the Public Service Commission of West Virginia (the "Commission") approving the financing.

10. West Virginia Infrastructure and Jobs Development Council Approval  
Letter.

WITNESS my signature and the official seal of the Buffalo Creek Public  
Service District as of the 22nd day of October, 1998.



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Secretary, Public Service Board,  
Buffalo Creek Public Service District

(SEAL)

CHASFS3:127182



C. JEFFREY VALLET, CPA  
OWNER

AMERICAN INSTITUTE OF  
CERTIFIED PUBLIC ACCOUNTANTS  
WV ASSOCIATION OF  
CERTIFIED PUBLIC ACCOUNTANTS

*Vallet & Associates, A.C.*

210 DINGESS STREET  
LOGAN, WEST VIRGINIA 25601  
(304) 752-1272

BUFFALO CREEK PUBLIC SERVICE DISTRICT

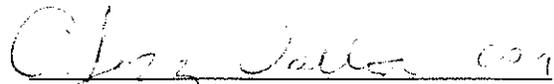
\$1,797,894 Sewerage System Revenue Bonds, Series 1998 A

CERTIFICATE OF ACCOUNTANT AS TO PARITY

I, C. Jeffrey Vallet, Certified Public Accountant, have reviewed the sewer service rates which were approved by the Public Service Commission of West Virginia and the customer usage information prepared by the Consulting Engineer for the The Buffalo Creek Public Service District (the "District"), indicating that no new customers will be added to the District's sewerage system (the "System") on account of the project to be financed with the proceeds of the above-referenced bonds (the "Bonds").

Based upon my investigation and the information by the Consulting Engineers for the District, it is my opinion that the net revenues actually derived from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of the Bonds, adjusted to reflect the new rates, plus the estimated average increased net revenues to be received in each of the three years succeeding completion of improvements to the System to be financed by the Bonds, will be at least 115% of the maximum debt service in any succeeding year on the District's Sewer Revenue Bonds, Series 1990 A, issued on July 24, 1990 and the Sewerage System Revenue Bonds, Series 1996 A and the Sewerage System Revenue Bonds, Series 1996 B, both issued on March 26, 1996 (collectively, the "Prior Bonds") and the Bonds, as required by the parity tests of Sections 7.07 of the Prior Bond Resolutions, authorizing issuance of said Prior Bonds.

WITNESS my signature as of this 21 day of October, 1998.

  
C. JEFFREY VALLET,  
Certified Public Accountant



## REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 22nd day of October, 1998, by and between BUFFALO CREEK PUBLIC SERVICE DISTRICT, a public corporation organized and existing under the laws of, and a political subdivision of, the State of West Virginia (the "Governmental Agency"), and LOGAN BANK & TRUST COMPANY, Man, West Virginia, a state banking corporation (the "Registrar").

WHEREAS, the Governmental Agency has, contemporaneously with the execution hereof, issued and sold its \$1,797,894 Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A (the "Series 1998 A Bond"), in the form of one bond numbered R-1, pursuant to the Bond Resolution and a Supplemental Resolution duly adopted October 13, 1998 (the "Resolutions");

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 Resolutions, copies of which are attached as Exhibit A and B hereto and incorporated herein by reference;

WHEREAS, the Resolutions provide for an appointment by the Governmental Agency of a Registrar for the Bonds; and

WHEREAS, the Governmental Agency desires to appoint, and by the Resolutions and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Resolutions 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 Governmental Agency 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 Resolutions, such duties including, among other things, the duties to authenticate, register and deliver the Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest on the Bonds from gross income for federal income tax purposes, 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 Governmental Agency advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Governmental Agency with appropriate records of all transactions carried out by it as Registrar and to furnish the Governmental Agency 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 Governmental Agency 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 Governmental Agency.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Governmental Agency hereby agrees to pay to the Registrar, from time to time, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection with this Registrar's Agreement.

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

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

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

GOVERNMENTAL AGENCY:

Buffalo Creek Public Service District  
P.O. Box 209  
Amherstdale, WV 25607  
Attention: Chairman

REGISTRAR:

Logan Bank & Trust Company  
Rte. 10 at Huff Junction  
Man, WV 25635  
Attention: Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Resolution.

IN WITNESS WHEREOF, BUFFALO CREEK PUBLIC SERVICE DISTRICT and LOGAN BANK & TRUST COMPANY, 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.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By: *Jack Beed - Chairman*  
Chairman, Public Service Board

LOGAN BANK & TRUST COMPANY,  
as Registrar

By: *Charles Gary Eels, V.P.*  
Authorized Officer

CHASFS3:127188



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK

Logan Bank & Trust Company, a state banking corporation with its principal office in Man, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution duly adopted by the Public Service Board of the Buffalo Creek Public Service District on October 13, 1998, and the Supplemental Resolution adopted October 13, 1998 (collectively, the "Resolution"), authorizing issuance of Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A, dated October 22, 1998, in the aggregate principal amount of \$1,797,894, and agrees to perform all duties of the Depository Bank in connection with such Bonds, all as set forth in said Resolution.

Witness my signature as of the 22nd day of October, 1998.

LOGAN BANK & TRUST COMPANY

By: Charles Gary Ellis, V.P.  
Authorized Officer



REQUEST AND AUTHORIZATION AS TO AUTHENTICATION  
AND DELIVERY OF THE BONDS

October 22, 1998

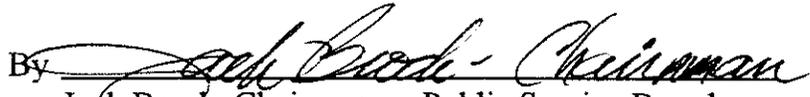
Logan Bank & Trust Company  
Rt. 10 at Huff Junction  
Man, WV 25635

Ladies and Gentlemen:

We herewith hand to you, duly executed, \$1,797,894 Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A, in the form of one bond numbered AR-1, authorized to be issued under and pursuant to the Bond Resolution, duly adopted by the Public Service Board (the "Board") of Buffalo Creek Public Service District (the "District") on October 13, 1998, and a Supplemental Resolution adopted by the Board on October 13, 1998 (collectively, the "Resolution").

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the District to the West Virginia Water Development Authority.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By  Chairman  
Jack Broek, Chairperson, Public Service Board

(SEAL)

Attest:

  
Secretary, Public Service Board



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

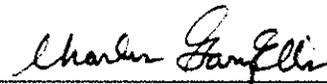
CERTIFICATE OF REGISTRATION OF BOND

I, Gary Ellis, Vice President for Logan Bank & Trust Company, Man, West Virginia, as Bond Registrar (the "Registrar"), hereby certify that on the 22nd day of October, 1998, the Bond of Buffalo Creek Public Service District in the principal amount of \$1,797,894 designated "Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A" (the "Series 1998 A Bond"), numbered AR-1, and dated as of the date hereof, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the District kept for that purpose at our office, by a duly authorized officer on behalf of Logan Bank & Trust Company, Man, West Virginia, as Registrar.

WITNESS my signature as of the 22nd day of October, 1998.

LOGAN BANK & TRUST COMPANY, as  
Registrar

By:

  
\_\_\_\_\_  
Its: Vice President

BOND REGISTER

Logan Bank & Trust Company, West Virginia,  
as Bond Registrar for  
\$1,797,894 Buffalo Creek Public Service District  
Sewerage System Revenue Bond, Series 1998 A

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Bondholder	Bond Number	Amount	Registration Date	Authorized Officer
West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311-1571	AR-1	\$1,797,894	October 22, 1998	<i>JE</i>

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CHASFS3:32064



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

RECEIPT FOR BONDS

The undersigned, BARBARA B. MEADOWS, Secretary-Treasurer of the West Virginia Water Development Authority, for and on behalf of the West Virginia Water Development Authority (the "Authority"), hereby certifies as follows:

1. On the 22nd day of October, 1998, in Amherstdale, West Virginia, the Authority received the entire original issue of \$1,797,894 in aggregate principal amount of the Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A (the "Series 1998 A Bonds"), said Bond being dated the 22nd day of October, 1998; and issued in the form of one bond, fully registered to the Authority, and numbered AR-1.

2. At the time of receipt of such Bond, it had been executed by Jack Brock, as Chairman of the Public Service Board of the District, by manual signature, and attested by Terry Jude, as Secretary of the Public Service Board of the District, by manual signature, and the official seal of said District had been impressed upon each Bond.

IN WITNESS WHEREOF, Barbara B. Meadows duly signed and delivered this receipt on behalf of the West Virginia Water Development Authority on the 22nd day of October, 1998.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

By: *Barbara B. Meadows*  
Barbara B. Meadows, Secretary-Treasurer



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

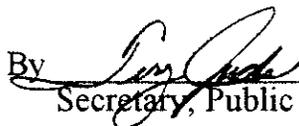
RECEIPT FOR BOND PROCEEDS

The undersigned Terry Jude, Secretary of the Public Service Board of the Buffalo Creek Public Service District (the "District"), hereby certifies as follows:

The District has received and hereby acknowledges receipt from the Authority, as original purchaser of the \$1,797,894 Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A (the "Bonds"), \$89,895, which was advanced at closing with the remainder to be advanced from time to time up to \$1,797,894.

IN WITNESS WHEREOF, Buffalo Creek Public Service District has caused this receipt to be executed by the Secretary of its Public Service Board on this 22nd day of October, 1998.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By   
Secretary, Public Service Board

AGENCY: ENVIRONMENTAL PROTECTION  
TOTAL: \$89,895.00

MARRANT #: 4-1428123  
DATE: 10/08/98

TRANSACTION ID: I003475806 1,  
INVOICE NUMBER: C544092-02

PAYEE REFERENCE

INVOICE DATE

PURCHASE ORDER

AMOUNT  
\$89,895.00

If you have questions concerning the above, please call 304-759-0507.

REMOVE DOCUMENT ALONG THIS PERFORATION

CTL# 0424304



THIS CHECK HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD AND COUNTERFEITING  
VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

State of West Virginia

STATE CAPITOL, CHARLESTON

WARRANT # 4-1428123

OCTOBER 08, 1998

PAY TO THE ORDER OF

BUFFALO CREEK PSD

4-1428123

\*\*\*\*\*\$89,895.00\*\*

WEST VIRGINIA TREASURY

*John A. Beckwith*  
STATE TREASURER

*Glen B. Gaumer III*  
AUDITOR

⑈ 4 1 4 2 8 1 2 3 ⑈ ⑆ 0 5 1 9 0 2 3 2 2 ⑆ 9 9 9 3 1 0 ⑈ 6 ⑈





October 22, 1998

BUFFALO CREEK PUBLIC SERVICE DISTRICT  
SEWERAGE SYSTEM REVENUE BOND, SERIES 1998 A

TO WHOM IT MAY CONCERN:

The undersigned duly authorized representative for the West Virginia Water Development Authority, the present holder of the entire outstanding aggregate principal amount of the Series 1990 A Bonds, hereinafter defined and described, hereby consents to the issuance of Sewerage System Revenue Bonds, Series 1998 A (the "Bond"), in the original aggregate principal amount of \$1,797,894 by the Buffalo Creek Public Service District (the "Issuer"), under the terms of the resolution authorizing the Bond, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuers' Sewer Revenue Bonds, Series 1990 A (the "Series 1990 A Bonds").

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
\_\_\_\_\_  
Director



October 22, 1998

BUFFALO CREEK PUBLIC SERVICE DISTRICT  
SEWERAGE SYSTEM REVENUE BOND, SERIES 1998 A

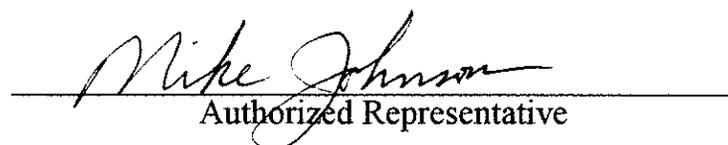
TO WHOM IT MAY CONCERN:

The undersigned duly authorized representatives for the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), the Authority, on behalf of the DEP, being the holder of the entire outstanding aggregate principal amount of the Series 1996 A Bonds and the Series 1996 B Bonds, hereinafter defined and described, hereby consents to the issuance of Sewerage System Revenue Bonds, Series 1998 A (the "Bond"), in the original aggregate principal amount of \$1,797,894 by the Buffalo Creek Public Service District (the "Issuer"), under the terms of the resolution authorizing the Bond, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuers' Sewerage System Revenue Bonds, Series 1996 A (the "Series 1996 A Bonds"), and the Sewerage System Revenue Bonds, Series 1996 B (the "Series 1996 B Bonds").

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Director

WEST VIRGINIA DIVISION OF ENVIRONMENTAL  
PROTECTION, a division of the West Virginia Bureau  
of Environment

  
Authorized Representative



BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

October 22, 1998

Logan Bank & Trust Company  
 Rt. 10 at Huff Junction  
 Man, WV 25635

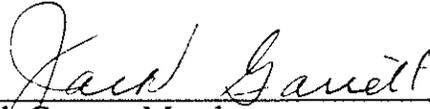
Attention: Corporate Trust

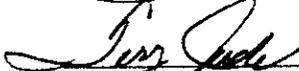
Re: Designation of Authorized Representatives

Dear Sir or Madam:

You are hereby advised by Buffalo Creek Public Service District (the "Issuer"), that its authorized representatives to and on behalf of the Issuer regarding Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A, are Jack Brock, Chairperson, Jack Garrett, Member and Terry Jude, Member and Secretary, whose signatures are as follows:

  
 Jack Brock, Chairperson

  
 Jack Garrett, Member

  
 Terry Jude, Member and Secretary

The Bank is authorized to accept and honor all requests for disbursements, directions or notices signed by any of the above persons.

Dated this 22nd day of October, 1998.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By   
 Its Chairman

DISBURSEMENT REQUEST FORM

Logan Bank & Trust Company  
 Rt. 10 at Huff Junction  
 Man, WV 25635

Attention: Corporate Trust

Re: \$1,797,894 Buffalo Creek Public Service District  
 Sewerage System Revenue Bonds, Series 1998 A

Ladies and Gentlemen:

You are authorized, on behalf of the Buffalo Creek Public Service District to make the following disbursements from the Series 1998 A Bond Construction Trust Fund:

The expenses listed above have been incurred as Costs of the Project that have not been the basis of any previous disbursement. Payment for each of the items listed is now due and owing. A copy of the Bond Ordinance of the Buffalo Creek Public Service District authorizing the disbursements is attached hereto.

Very truly yours,

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By \_\_\_\_\_  
 Its Authorized Representative

HNTB CORPORATION

By \_\_\_\_\_  
 Consulting Engineer

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





BUFFALO CREEK PUBLIC SERVICE DISTRICT

\$1,797,894 Sewerage System Revenue Bond, Series 1998 A

CERTIFICATE AS TO NON-ARBITRAGE

I, Jack Brock, Chairman of the Public Service Board of Buffalo Creek Public Service District, in Logan County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$1,797,894 aggregate principal amount of Sewerage System Revenue Bond, Series 1998 A, dated October 22, 1998 (the "Bonds"), hereby certify to the best of my knowledge and belief as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986 and applicable regulations (the "Code"). I am one of the officers of the Issuer charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer and certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on October 22, 1998, the date on which the Bonds are to be physically delivered in exchange for a portion of the issue price thereof, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Bonds Resolution pursuant to which the Bonds are issued, the Issuer has covenanted to make no use of the proceeds of the Bonds which would cause the Bonds to be "arbitrage Bonds" within the meaning of the Code.

6. The Bonds were sold on October 22, 1998, to the West Virginia Water Development Authority (the "Authority") for an aggregate purchase price of par (100%). On the date hereof, the Issuer received \$89,895 from the Authority, being a portion of the principal amount of the Bonds.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) permanently financing the costs of acquisition and construction of certain improvements and extensions to the existing system

of the Issuer (the "Project"), and (ii) paying costs of issuance and other costs in connection therewith.

8. Acquisition and construction of the Project will proceed with due diligence to completion. The Project is expected to be completed within one year.

9. The total cost of the Project is estimated at \$1,797,894. Sources and uses of funds for the Project are as follows:

SOURCES

Series 1998 A Bonds	<u>\$1,797,894</u>
Total Sources	\$1,797,894

USES

Construction	\$1,519,950
Technical Services	\$ 153,730
Administrative	\$ 3,000
Financing Costs	\$ 42,000
Contingency	\$ 71,214
Closing Costs	<u>\$ 8,000</u>
Total Uses	\$1,797,894

Except for the proceeds of the Bonds and as otherwise provided in the Resolution and the Prior Resolution, no other funds of the Issuer will be available to meet the costs of the Project and no balances are available to meet such costs in any account which may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

10. Pursuant to Article IV of the Bond Resolution, the following special funds or accounts have been created (or continued pursuant to the Prior Resolutions):

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 1998 A Bond Construction Trust Fund; and
- (4) Series 1998 A Bond Sinking Fund,
  - (a) Within the Series 1998 A Bond Sinking Fund, the Series 1998 A Bond Reserve Account.

11. Moneys held in the Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of construction of the Project. To the extent not required by the Resolution and the Prior Resolutions to be deposited in the Revenue Fund and the Rebate Fund, all investment earnings on moneys in the Series 1998 A Bond Sinking Fund and the Series 1998 A Bond Reserve Account will be placed in the Revenue Fund for use in accordance with the terms thereof.

12. Except for the Sinking Fund and the Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds, and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts or other investment-type property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. The Issuer will fund the reserve account over a 10-year period. The amounts deposited in the Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Bonds and will not exceed 10% of average annual principal and interest on the Bonds. Amounts in the Reserve Account, not to exceed 10% of the proceeds of the Bonds, and if invested, will be invested without yield limitation. The establishment of the Reserve Account is required by the Authority and the West Virginia Division of Environmental Protection, is vital to its purchase of the Bonds and is reasonably required to assure payments of debt service on the Bonds.

13. The Issuer will issue the notice to proceed for the Project on or about October 27, 1998, and acquisition and construction will commence immediately thereafter.

14. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within one year.

15. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Authority.

16. With the exception of the amounts deposited in the Sinking Fund, for payment of interest on the Bonds and amount deposited in the Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 18 months from the date of issuance thereof.

17. Any money deposited in the Sinking Fund for payment of the principal and interest on the Bonds (other than the Reserve Account therein) will be spent within a 18 month period beginning on the date of receipt and any moneys received from investment of amounts held in the Sinking Fund (other than the Reserve Account therein) will be spent within a one-year period beginning the date of receipt.

18. All the proceeds of the Bonds which were used for the payment of costs of the Project will be expended for such purposes within three years.

19. 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.

20. All property financed with the proceeds of the Bonds will be held for Federal income tax purposes by (or on behalf of) a qualified governmental unit.

21. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

22. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

23. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

24. The Issuer shall use the proceeds of the Bonds solely for the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

25. The Issuer shall not permit at any time or times any of the proceeds of the Bonds, or any other funds of the Issuer, to be used directly or indirectly in a manner which would result in the exclusion of Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity Bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for Federal income tax purposes.

26. The Bonds, in whole or in part, is not and will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

27. The Issuer will rebate to the United States the amount, if any, required by the Code and to take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion from gross income for Federal income tax purposes of the interest on the Bonds.

28. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for Federal income tax purposes of the Bonds.

29. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

30. The Issuer has either (a) funded the 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, or (b) created the Reserve Account which will be funded with equal payments on a monthly basis over a 10 year period until such Reserve Account holds 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. Moneys in the Reserve Account and the Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

31. The Issuer shall submit to the Authority within 30 days following the end of the Issuer's Bonds year a certified copy of its rebate calculation or, if the Issuer qualifies for an exception to rebate, then the Issuer shall submit to the Authority a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bonds year which would make the Bonds subject to rebate.

32. The Issuer expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

33. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

34. Jackson & Kelly is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

35. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

IN WITNESS WHEREOF, I have set my hand this 22nd day of October, 1998.

BUFFALO CREEK PUBLIC SERVICE DISTRICT

By  Chairman, Public Service Board



**Part I Reporting Authority** If Amended Return, check here

1 Issuer's name  
Buffalo Creek Public Service District

2 Issuer's employer identification number  
55 : 0542403

3 Number and street (or P.O. box if mail is not delivered to street address)  
P. O. Box 209

Room/suite

4 Report number  
G19 98 - 1

5 City, town, or post office, state, and ZIP code  
Amherstdale, WV 25607

6 Date of issue  
10-22-98

7 Name of issue \$1,797,894 Buffalo Creek Public Service District Sewerage System Revenue Bonds, Series 1998A

8 CUSIP number  
N/A

**Part II Type of Issue (check applicable box(es) and enter the issue price)**

9	<input type="checkbox"/> Education (attach schedule-see instructions)	9	\$
10	<input type="checkbox"/> Health and hospital (attach schedule-see instructions)	10	
11	<input type="checkbox"/> Transportation	11	
12	<input type="checkbox"/> Public safety	12	
13	<input checked="" type="checkbox"/> Environment (including sewage bonds)	13	1,797,894
14	<input type="checkbox"/> Housing	14	
15	<input type="checkbox"/> Utilities	15	
16	<input type="checkbox"/> Other. Describe (see instructions) ▶	16	
17	If obligations are tax or other revenue anticipation bonds, check box ▶ <input type="checkbox"/>		
18	If obligations are in the form of a lease or installment sale, check box ▶ <input type="checkbox"/>		

**Part III Description of Obligations**

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity	12/01/2019	2.00%	\$27,186.73	\$27,186.73			
20 Entire issue			\$1,797,894.00	\$1,797,894.00	11.919 years	√ %	√ %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

21 Proceeds used for accrued interest			21 -0-
22 Issue price of entire issue (enter amount from line 20, column (c))			22 1,797,894.00
23 Proceeds used for bond issuance costs (including underwriters' discount)	23	8,000.00	
24 Proceeds used for credit enhancement	24	-0-	
25 Proceeds allocated to reasonably required reserve or replacement fund	25	-0-	
26 Proceeds used to currently refund prior issues	26	-0-	
27 Proceeds used to advance refund prior issues	27	-0-	
28 Total (add lines 23 through 27)	28		8,000.00
29 Nonrefunding proceeds of the issue (subtract line 28 from line 22 and enter amount here)	29		1,789,894.00

2.0080123% 1.8102887%

**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

30 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ N/A years

31 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ N/A years

32 Enter the last date on which the refunded bonds will be called ▶

33 Enter the date(s) the refunded bonds were issued ▶

**Part VI Miscellaneous**

34 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) 34 -0-

35 Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception) 35 -0-

36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) 36a -0-

b Enter the final maturity date of the guaranteed investment contract ▶

37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units 37a -0-

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box  and enter the name of the issuer ▶ and the date of the issue ▶

38 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box

39 If the issuer has identified a hedge, check box

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here

*Jack Brock - Chairman* 10/22/98  
 Signature of issuer's authorized representative Date  
 Jack Brock, Chairman  
 Type or print name and title



**WV MUNICIPAL BOND COMMISSION**  
Suite 300 - L & S Building  
812 Quarrier Street, Charleston, WV 25301  
(304) 348-3971

**NEW ISSUE REPORT FORM**  
Date of Report: October 22, 1998

ISSUE: \$1,797,894 Buffalo Creek Public Service District Sewerage System Revenue Bonds, Series 1998A

ADDRESS: P.O. Box 209 Amherstdale, WV 25607 COUNTY: Logan

PURPOSE OF ISSUE: New Money  Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: October 22, 1998 CLOSING DATE: October 22, 1998

ISSUE AMOUNT: \$1,797,894 RATE: 2%

1st DEBT SERVICE DUE: March 1, 2000 1st PRINCIPAL DUE: March 1, 2000

1st DEBT SERVICE AMOUNT: \$27,322.66 PAYING AGENT: WV Municipal Bond Commission

**ISSUERS**

BOND COUNSEL: Jackson & Kelly

Contact Person: Samme L. Gee, Esquire  
Phone: (304) 340-1318

(DEPOSITORY-REGISTRAR)

CLOSING BANK: Logan Bank & Trust Company ESCROW TRUSTEE: \_\_\_\_\_

Contact Person: Gary Ellis  
Phone: (304) 583-8880

**UNDERWRITERS**

BOND COUNSEL: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: \_\_\_\_\_

Contact Person: Edward I. Eiland Contact Person: \_\_\_\_\_  
Position: Attorney Function: \_\_\_\_\_  
Phone: (304) 752-2275 Phone: \_\_\_\_\_

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_

\_\_\_\_\_ Capitalized Interest: \$ \_\_\_\_\_

By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_

Check(s)  Other: Payoff Note \$42,000

**REFUNDS & TRANSFERS BY MBC AT CLOSE:**

By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_

\_\_\_\_\_ Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_

\_\_\_\_\_ IGT \_\_\_\_\_ To Cons. Invest. Fund \$ \_\_\_\_\_

\_\_\_\_\_ To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: \_\_\_\_\_

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: \_\_\_\_\_

Transfers Required: \_\_\_\_\_

NAME BUFFALO CREEK PUBLIC SERVICE  
CONSTRUCTION FUND  
ACCOUNT NO. \_\_\_\_\_

DATE OCT, 22, 1998 69-102/515

PAY TO THE ORDER OF WV MUNICIPAL BOND COMMISSION \$42,000.00

FORTY TWO THOUSAND DOLLARS AND NO/100----- DOLLARS 

  
**MAN BANK**  
OF LOGAN BANK & TRUST CO.  
P.O. BOX 250, MAN, WEST VIRGINIA 25635

MEMO \_\_\_\_\_  
:051501024: 001588 11  
  
MP



# JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLEY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

1144 MARKET STREET  
WHEELING, WEST VIRGINIA 26003  
TELEPHONE 304-233-4000

1660 LINCOLN STREET  
DENVER, COLORADO 80264  
TELEPHONE 303-390-0063

175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40595  
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE 202-973-0200

*Jackson & Kelly is a member of Lex  
Mundi, a global association of more  
than 120 independent law firms.*

300 FOXCROFT AVENUE  
MARTINSBURG, WEST VIRGINIA 25402  
TELEPHONE 304-263-8800

256 RUSSELL AVENUE  
NEW MARTINSVILLE, WEST VIRGINIA 26155  
TELEPHONE 304-455-1751

6000 HAMPTON CENTER  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-599-3000

412 MARKET STREET  
PARKERSBURG, WEST VIRGINIA 26101  
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE  
FAIRMONT, WEST VIRGINIA 26554  
TELEPHONE 304-368-2000

October 22, 1998

Public Service Board  
Buffalo Creek Public Service District  
P.O. Box 209  
Amherstdale, WV 25607

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

State of West Virginia  
Division of Environmental Protection  
Office of Water Resources  
617 Broad Street  
Charleston, West Virginia

Re: \$1,797,894 Buffalo Creek Public Service District  
Sewerage System Revenue Bond, Series 1998 A

Ladies and Gentlemen:

We are bond counsel to Buffalo Creek Public Service District (the "Governmental Agency"), a duly organized and presently existing public corporation under the laws of the State of West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the loan agreement, dated September 18, 1998, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment ("DEP"), and (ii) the issue of the Buffalo Creek Public Service District Sewerage System Revenue Bond, Series 1998 A of the Governmental Agency, dated October 22, 1998 (the "Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are in the principal amount of \$1,797,894, issued in the form of one bond registered to the Authority, with principal and interest payable September 1, December 1, March 1 and June 1 of each year, beginning March 1, 2000, at the rate of two percent (2%) per annum, as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

4.1

Buffalo Creek Public Service District  
West Virginia Water Development Authority  
West Virginia Division of Environmental Protection  
October 22, 1998  
Page 2

The Bonds are issued for the purposes of paying a portion of the costs of the acquisition and construction of certain additions, betterments and improvements to the existing public sewerage facilities of the Governmental Agency (the "Project") and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Local Statute"), under which the Bonds are issued, and the Loan Agreement that has been undertaken. The Bonds have been authorized by a bond resolution (the "Resolution") and a supplemental resolution (the "Supplemental Resolution") duly passed by the Governmental Agency on October 13, 1998 (collectively the "Local Act"), which contain provisions and covenants substantially in the form of those set forth in the Loan Agreement. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

In connection with the issuance of the Bonds, the Governmental Agency has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

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 DEP and cannot be amended so as to affect adversely the rights of the Authority or DEP or diminish the obligations of the Governmental Agency without the consent of the Authority and DEP.
3. The Governmental Agency is a duly organized and presently existing public corporation with full power and authority to acquire and construct the Project and to

operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bonds, all under the Local Statute and other applicable provisions of law.

4. The Governmental Agency has legally and effectively adopted the Local Act and all other necessary resolutions and orders in connection with the issuance and sale of the Bonds.

5. The Bonds are valid and legally enforceable special obligations of the Governmental Agency, payable from the Net Revenues of the System referred to in the Local Act and secured by a first lien on and pledge of the net revenues of said System and on a parity with the Prior Bonds.

6. The Governmental Agency has reserved the right to issue additional bonds ranking on a parity with the Bonds, as provided in the Local Act.

7. The 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 Revenues of the System on a parity with the Prior Bonds referred to in the Bond Resolution and secured by a first lien on and pledge of the Net Revenues of said System, all in accordance with the terms of the Bonds and the Local Act.

8. The interest on the Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporation; however, it should be noted that with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations. The opinion set forth in the preceding sentence is subject to the condition that the Governmental Agency comply on a continuing basis, with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Resolution and the Certificate as to Arbitrage and other certificates delivered in connection with the issuance of the Bonds. Failure to comply with such requirements could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. The Governmental Agency has covenanted to comply with all such requirements. We express no opinion regarding other federal tax consequences with respect to the Bonds.

Buffalo Creek Public Service District  
West Virginia Water Development Authority  
West Virginia Division of Environmental Protection  
October 22, 1998  
Page 4

9. The Bonds are, by the Local Statute, exempt from all taxation by the State of West Virginia and the other taxing bodies of the State.

10. The Sewer Design Note, Series 1997, has been paid in full in accordance with its terms.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds and the Local Act may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that such enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed Series 1998 A 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,

*Jackson & Kelly*



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October 22, 1998

Public Service Board  
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West Virginia Water Development Authority  
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State of West Virginia  
Division of Environmental Protection  
Office of Water Resources  
617 Broad Street  
Charleston, WV 25301

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

Re: \$1,797,894 Buffalo Creek Public Service District  
Sewerage System Revenue Bond, Series 1998 A

Gentlemen:

I am counsel to the Buffalo Creek Public Service District (the "District"). As such counsel, I have examined copies of the approving opinion of Jackson & Kelly, as bond counsel, relating to the above-captioned Series 1998 A Bond (the "Bonds"), the Bond Resolution adopted by the Public Service Board of the District on October 13, 1998, as supplemented by a Supplemental Resolution adopted October 13, 1998, (collectively, the "Resolutions"), and the loan agreement between the District and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Department of Environmental Protection (the "DEP") dated September 18, 1998, and other documents relating to the above-captioned Bonds of the District. Terms used in said opinion and Resolutions and not otherwise defined herein have the same meanings herein.

I am of the opinion that:

1. The District was duly and legally created and the members of the Public Service Board (the "Board") of the District were duly and properly elected or appointed and are thereby authorized to act on behalf of the District.

EILAND & BENNETT

2. The Resolutions have been duly adopted by the District and are in full force and effect.
3. The Loan Agreement has been duly authorized by and executed on behalf of the District and is a valid and binding special obligation of the District enforceable in accordance with the terms thereof.
4. The Loan Agreement inures to the benefit of the Authority and DEP and cannot be amended so as to affect adversely the rights of the Authority or DEP or diminish the obligations of the District without the consent of the Authority and DEP.
5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Loan Agreement, and the carrying out of the terms thereof, do not and will not in any material respect conflict with or constitute on the part of the District a breach of or default under any agreement or other instrument to which the District is a party or any existing law, regulation, court order or consent decree to which the District is subject.
6. 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 council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bonds, the Project and the subsequent construction of the facilities contemplated by the Project, the operation of the System, the collection of Revenues or the pledge of Net Revenues to the payment of the Bonds. However, I report that on October 9, 1998, a personal injury civil action styled "Delores Ann Butcher, Plaintiff, vs. The Buffalo Creek Public Service District, Defendant, Civil Action No. 98-C-348-P" was instituted in the Circuit Court of Logan County, West Virginia. The complaint does not state the amount of damages which the plaintiff demands. The Buffalo Creek Public Service District carries liability insurance through the County Commission of Logan County.
7. An independent certified public accountant has certified that the existing rates are sufficient to pay operation and maintenance expenses of the System, to pay debt service on the Bonds and the Prior Bonds, and to meet the parity and coverage requirements in the Prior Resolutions, the Resolution and the Loan Agreement. Under the Act, the District has full authority to pledge revenues from said rates to the payment of the Bonds.

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

Very truly yours,



Edward I. Eiland

EIE:vld



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October 22, 1998

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Buffalo Creek Public Service District  
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State of West Virginia  
Division of Environmental Protection  
Office of Water Resources  
617 Broad Street  
Charleston, WV 25301

Re: Buffalo Creek Public Service District  
Sewerage System Revenue Bond, Series 1998A

Ladies and Gentlemen:

I have served as counsel to Buffalo Creek Public Service District (the "Issuer") in regard to certain matters concerning the Public Service Commission of West Virginia (the "Commission"). I was active in obtaining the Issuer's Order for application to increase sewer rates and charges and for approval of financing. Pursuant to the above-noted document, I am of the opinion as follows:

1. The Issuer has received a Recommended Decision and Order from the Commission in Case No. 97-0694-PSD-CN dated October 1, 1998, which became the final order on October 11, 1998, and said Certificate is in full force and effect. The appeal period has been waived in writing by the Issuer and the Commission.

KAUFFELT & KAUFFELT

Mr. Daniel B. Yonkosky  
Buffalo Creek Public Service District  
Samme L. Gee, Esquire  
State of West Virginia  
October 22, 1998  
Page 2

2. Although an independent certified public accountant has certified that the existing rates are sufficient at this time to pay operation and maintenance expenses of the System, the Issuer has the authority under the Act to adopt new rates, provided the new rates are approved by the Commission, and the revenues from said rates may be used to pay the debt service on the above-noted bond and the operation and maintenance cost of the System.

This opinion may be relied upon as if addressed to all counsel.

Very truly yours,



Mark E. Kauffelt  
Counsel for Public Service Commission  
Matters

MEK/rf



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May 7, 1998

Division of Environmental Protection  
Management Branch  
Construction Assistance  
617 Broad Street  
Charleston, WV 25301-1251

C  
Gentlemen:

TITLE OPINION

O  
Re Buffalo Creek Public Service District  
Wastewater Treatment Plant  
SRF No. C-544092

P  
Y  
I have examined the properly-indexed public records in the office of the Clerk of the County Commission of Logan County, West Virginia, concerning the title to that certain parcel of real estate, together with all and singular the improvements thereon and the appurtenances thereunto belonging or in any manner thereunto appertaining, located near the Town of Man, Triadelphia District, Logan County, West Virginia, and being more particularly described as follows:

Commencing at a point which is the point of BEGINNING which lies 15 feet west of the center line of the westernmost siding track of The Chesapeake and Ohio Railway Company and is 105.70 feet and at a bearing of S 26° 08' 50" W from the said Railway Mile Post 78; thence S 33° 00' 52" W 359.36 feet to a point which lies 10 feet, more or less, from the east edge of the Guyandotte River; thence N 42° 59' 20" W 122.11 feet to a point which lies 10 feet, more or less, from said edge of river; thence N 37° 46' 02" W 197.47 feet to a point which lies 10 feet, more or less, from said edge of river; thence N 33° 24' 54" W 197.64 feet to a point which lies 10 feet, more or less, from said edge of river; thence N 27° 30' 18" W 293.31 feet to a point which lies 10 feet, more or less, from said edge of river; thence N 50° 44' 54" E 163.72 feet to a point which lies 15 feet west of the center

line of the westernmost siding track of the said Railway; thence parallel to said track center line along an arc whose chord is S 45° 17' 12" E 416.91 feet; thence parallel to said track center line along an arc whose chord is S 52° 54' 19" E 287.08 feet to the point of BEGINNING, including all the land lying between the line following said river and the water's edge and containing 4.66 acres, more or less, as shown on Drawing No. 3405-21-06-02, Sheet 2 of 56, dated August 4, 1973, last revised November 24, 1975, which is recorded in the office of the Clerk of the County Commission of Logan County, West Virginia, in Map Book No. 8, at page 105, and which is made a part hereof by reference; being the real estate which was conveyed to Buffalo Creek Public Service District by The Chesapeake and Ohio Railway Company by a deed dated April 7, 1976, and recorded in the aforesaid Clerk's office in Deed Book No. 381, at page 542.

The wastewater treatment plant of the Buffalo Creek Public Service District is located upon the above-described real estate.

My examination covered the period of sixty (60) years ending at 8:30 a.m. on the date of this letter. Based upon that examination, I am of the opinion that Buffalo Creek Public Service District is vested with a good and marketable title in fee simple in and to said parcel of land, subject to the following:

1. Said parcel is subject to a perpetual easement, generally 15 feet in width plus slopes, thereover and thereupon for construction, use, and maintenance of a vehicular roadway by and between said railway company's remaining lands, said easement area being located parallel, adjacent, and along the southern side of the northerly boundary lines of said parcel, which easement was excepted and reserved in the aforesaid deed dated April 7, 1976, and is shown on the aforementioned drawing.

2. Such errors or omissions as may exist in the aforementioned public records and such matters as have been admitted to record but which are not yet indexed.

3. Whatever might be disclosed by a survey and a personal inspection of the premises.

Said parcel of land is exempt from ad valorem taxation.

Based upon information provided by the Buffalo Creek Public District, I certify that no new rights of way are necessary for the above-referenced project because the District already owns the wastewater treatment plant site.

Respectfully submitted,

**ORIGINAL SIGNED BY**

Edward I. Eiland

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