

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

Closing Date: December 19, 2005

TRANSCRIPT OF PROCEEDINGS

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State of West Virginia



Certificate

*I, Betty Ireland, 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, AND CHAPTER 16, ARTICLE 13A OF THE 2005
SUPPLEMENT TO 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*

December 6, 2005

Betty Ireland
Secretary of State

jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted “the” for “such” throughout, substituted “the” for “said” throughout, inserted “fees” following “rates” throughout; in the first paragraph, inserted “and/or stormwater system” following “existing sewer system”, inserted “or stormwater system” following “such sewer system”; in the second paragraph, inserted “or stormwater” following “sewage”, inserted “or

stormwater facilities” following “sewer facilities”; in the fourth paragraph, added “or entire stormwater works” to the end; in the sixth paragraph, deleted “such” following “fixing” and “publication of”; in the eighth paragraph, deleted “such” preceding “rates” twice; and in the last paragraph, added the proviso.

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-24. Acceptance of loans, grants or temporary advances.
 16-13A-25. Borrowing and bond issuance; procedure.

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 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

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. Att'y 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.*, 199 W. Va. 490, 485 S.E.2d 434 (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. Att'y 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

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. Att'y 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 or 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 [§§ 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, and became effective June 6, 1986.

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

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. Att'y 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 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. Att'y Gen., June 12, 1985, No. 9.

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

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

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. Att'y 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. Att'y Gen., Nov. 13, 1975.

Applied in *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

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.)

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 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 public service district may furnish water wholesale in bulk quantities to a municipal corporation in another state. 51 Op. Att'y Gen. 739 (1966).

Applied in *McCloud v. Salt Rock Water Pub. Serv. Dist.*, 207 W. Va. 453, 533 S.E.2d 679 (2000).

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.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is 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.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to 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;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to 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;

(3) For districts with two thousand customers or more, up to 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

(4) For districts with four thousand or more customers, up to 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.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to 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;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to 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

(4) For districts with annual revenues of five hundred thousand dollars or more, up to 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 and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) 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.

(e) 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 for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) 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 the change is effective from the filing of 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; 2000, c. 199.)

Effect of amendment of 2000. — Acts 2000, c. 199, effective June 9, 2000, rewrote the section.

Compensation for performing 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.

§ 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.)

§ 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. Stahl*, 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. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Superior right of municipality to extend

public services. — If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right under this section to extend public services, such as water and/or sewer service, which were not being previously furnished to the tract by the public service district. *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

When consent of municipality needed. — Where municipality has superior right to extend social services, a public service district would need the consent of the municipality and the public service commission in order to provide such services. *Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998).

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. Malden Pub. Serv. Dist.*

171 W. Va. 645, 301 S.E.2d 601 (1983) (construing this section prior to 1980 and 1981 amendments).

Liens. — The provision that delinquent fixed rates and charges for services rendered by a public service district shall be a lien on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes, does not deprive the owners of their property without due process of law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Public service district liens created and enforceable under this section are subject to the recordation requirements of § 38-10C-1 so that such liens must be docketed to be enforceable against a purchaser of the property for valuable consideration, without notice. *McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist.*, 199 W. Va. 490, 485 S.E.2d 434 (1997).

Sewer connection requirements. — The boards of public service districts have no authority to require potential users who live outside the boundaries of the districts, but within the 10-mile limit, to hook onto the district's sewer facilities. *Op. Att'y Gen.*, July 8, 1976.

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

§ 16-13A-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 (Michie).

§ 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 resolu-

tion or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

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

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

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

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

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

nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

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

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

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

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall

direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

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

As to receivers, see Rule 66.

As to application of rules to writ of mandamus, see Rule 81(a)(5).

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

Mandamus. — Mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to require a municipal corporation to comply with rate covenants in its rev-

enue bonds. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

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

§ 16-13A-18. Operating contracts.

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

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

In any case where a public service district owns a water, sewer or gas system and 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 commis-

sions 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.)

§ 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. Att'y Gen., July 8, 1976.

Combination of bond issues. — Combination of two outstanding bond issues into one refunding bond issue may well be restricted by

the use of the singular language in this section. Op. Att'y Gen., July 8, 1976.

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

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

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

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. Malden 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 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. — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

Concerning the reference to "the date this section takes effect", Acts 1958, c. 14, which

enacted this section and included this language, became effective February 1, 1958. Acts 1960, c. 19, which amended this section, provided that the act take effect January 29, 1960.

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

Editor's notes. — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

Concerning the reference to "the date this

section takes effect", Acts 1965, c. 134, which amended this section, provided that the act take effect March 13, 1965.

§ 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 by public service districts of money from counties and/or municipalities, as evidenced by a note, is permissible borrowing under this section. Op. Att'y Gen., May 6, 1988, No. 27.

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

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four [§ 16-13A-13, § 16-13A-20 or § 16-13A-24] of this article, without the prior consent and approval of the public service commission. The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, evidence of compliance with chapter five-g [§§ 5G-1-1 et seq.] of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm in the past two years requiring engineering services; or (2) completion of a construction project within the past two years requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

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

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

(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.

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. *Sexton 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. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

ARTICLE 13B.

COMMUNITY IMPROVEMENT ACT.

Sec.	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.

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(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within twenty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty 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 rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105; 2001, c. 212; 2004, c. 185.)

Effect of amendment of 2004. — Acts 2004, c. 185, effective June 10, 2004, inserted "deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit" in the section heading; added the subsection designations for (c) through (m); added (d)

and (e); substituted "Class II-0" for "Class II-O" in (h); substituted "within twenty days" for "within thirty days" in (k); in (l) substituted "twenty days" for "thirty days" and added the second sentence; and deleted "and regulations" following "reasonable rules" in (m).

§ 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

Cited in *Buda v. Town of Masontown*, 2005 W. Va. LEXIS 18, — W. Va. —, — S.E.2d — (Mar 22, 2005).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.
16-13A-1c. General purpose of districts.
16-13A-2. Creation of districts by county commission; enlarging, re-

Sec.
ducing, merging, or dissolving district; consolidation; agreements, etc.; infringing-

§ 16-13A-1

PUBLIC HEALTH

Sec.		Sec.	
	upon powers of county commission; filing list of members and districts with the Secretary of State.	16-13A-9.	Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-3.	District to be a public corporation and political subdivision; powers thereof; public service boards.	16-13A-14.	Items included in cost of properties.
16-13A-4.	Board chairman; members' compensation; procedure; district name.	16-13A-18a.	Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
16-13A-5.	General manager of board.	16-13A-24.	Acceptance of loans, grants or temporary advances.
16-13A-7.	Acquisition and operation of district properties.	16-13A-25.	Borrowing and bond issuance; procedure.
16-13A-8.	Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.		

§ 16-13A-1. Legislative findings.

Code of State Rules References. — Government of public service districts, 150 CSR 17, effective September 1, 1990.

§ 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, sewerage or stormwater 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"); (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"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs"). As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and

natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations: Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of Highways. (1986, c. 81; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted "or stormwater" following sewerage" in the first sentence; added subdivisions (4) and (5); added the last two sentences; and made minor stylistic changes.

§ 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, stormwater 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. Within ten days of fixing the date of hearing, the county commission shall provide the Executive Secretary of the Public Service Commission with a copy of the order or petition and notification of the time and place of the hearing to be held by the county commission. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if avail-

able 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 may 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; 2002, c. 272; 2005, c. 195.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, in (a), capitalized "On" at the beginning of subdivision (1), and inserted "stormwater services" near the middle of the last sentence.

Effect of amendment of 2005. — Acts 2005, c. 195, effective July 8, 2005, added the second sentence in (c); and made minor stylistic changes.

§ 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, or for furnishing stormwater services for 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; 2002, c. 272.)

Effect of amendment of 2002. — Acts town or other municipal corporation" in the 2002, c. 272, effective June 7, 2002, inserted "or second sentence of the first paragraph. for furnishing stormwater services for the city,

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

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is 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.

(b) Salaries of the board members are:

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(1) For districts with fewer than six hundred customers, up to 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;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to 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;

(3) For districts with two thousand customers or more, up to 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

(4) For districts with four thousand or more customers, up to 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.

(c) Public service districts selling water to other water utilities for resale may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than fifty thousand dollars, up to 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;

(2) For districts with annual revenues of fifty thousand dollars or more, but less than two hundred fifty thousand dollars, up to one hundred dollars per attendance at regular monthly meetings and seventy-five dollars per attendance at special meetings, total salary not to exceed two thousand five hundred fifty dollars per annum;

(3) For districts with annual revenues of two hundred fifty thousand dollars or more, but less than five hundred thousand dollars, up to 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

(4) For districts with annual revenues of five hundred thousand dollars or more, up to 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 and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) 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.

(e) 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 for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) 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. The county commission which created a district or county commissions if more than one created the district may, upon written request of the district, adopt an order changing the official name of a public service district: Provided, That such name change will not be effective until approved by the Public Service Commission of West Virginia and the owners of any bonds and notes issued by the district, if any, shall have consented, in writing, to the name change. If a district includes territory located in more than one county, the county commission or county commissions changing the name of the district shall provide any county commission into which the district also extends with a certified copy of the order changing the name of the district. 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; 2000, c. 199; 2005, c. 196.)

Effect of amendment of 2005. — Acts 2005, c. 196, effective July 7, 2005, rewrote the second sentence in (f) pertaining to the changing of the official or corporate name of a public service district by the public service board; and made minor 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 or her successor is employed, and his or her compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his or her 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 or she shall perform and exercise such other powers and duties as may be conferred upon him or her by the board.

Such general manager shall be chosen without regard to his or her political affiliations and upon the sole basis of his or her administrative and technical qualifications to manage public service properties and affairs of the district and he or she 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 or she 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, sewer or stormwater service from a municipal water, sewer or stormwater 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, sewer or stormwater system or public service district from which such water, sewer or stormwater 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; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted “or stormwater” following “sewer” four times in the third paragraph, and made minor stylistic changes.

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

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. 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; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, added “including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities” to the end of the first sentence.

§ 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, stormwater 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, a stormwater system, stormwater management program or gas facilities for water, sewer, stormwater 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 the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of

Highways: Provided, however, 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; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, in the second paragraph, inserted “stormwater facilities” following “sewer facilities” in the proviso; in the third paragraph, inserted “a stormwater system, stormwater management program” following “sewer facilities” and “stormwater” preceding “or gas services”; in the last paragraph, added a new first proviso and redesignated the former first proviso as the second.

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

(a)(1) The board may make, enact and enforce all needful rules 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. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or law to pay the cost of maintenance, operation and depreciation of the 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 bond under this article. The schedule of the rates, fees and charges may be based upon:

- (A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;
- (B) The number and kind of fixtures connected with the facilities located on the various premises;
- (C) The number of persons served by the facilities;
- (D) Any combination of paragraphs (A), (B) and (C) of this subdivision;
- (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. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater

facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. 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. Notwithstanding the provisions of section eight [§ 24-3-8], article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or fifty dollars, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or fifty dollars and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or fifty dollars. In any case where a deposit is forfeited to pay service rates, fees 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 deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or fifty dollars has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: Provided, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. 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, ten days after the water or gas services become delinquent.

(b) 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 the 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.

(c) 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 division of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of 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 the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of 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 the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs 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 the 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 division of health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities

are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the 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, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) Whenever any district has made available a stormwater system to any owner, tenant or occupant of any real property located near the stormwater system and where stormwater from real property affects or drains into the stormwater system, it is hereby found, determined and declared that the owner, tenant or occupant is being served by the stormwater system and it is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge, and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are 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, stormwater 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: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) 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; 2002, c. 272; 2003, c. 183.)

Code of State Rules References. — Rules and regulations for the government of gas utilities and gas pipeline safety, 150 CSR 4, effective July 21, 1996.

Rules and regulations for the government of sewer utilities, 150 CSR 5, effective October 24, 2003.

Rules and regulations for the government of telephone utilities, 150 CSR 6, effective October 10, 2000.

Rules and regulations for the government of water utilities, 150 CSR 7, effective October 24, 2003.

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted “fees” following “rates” throughout the section; in the first paragraph, deleted “and regulations” following “needful rules” in the first sentence, inserted a new third sentence, substituted “Where water, sewer, stormwater or gas services, or any combination thereof” for

“Where water, sewer and gas services” in the present fourth sentence; inserted the fifth paragraph; in the present sixth paragraph, inserted “stormwater systems or stormwater management systems” following “sewer facilities” and “stormwater” preceding “or gas bills” in the first sentence.

Effect of amendment of 2003. — Acts 2003, c. 183, effective June 6, 2003, added subsection designations; rewrote present (a)(2), and (c); in (d), substituted “division of health” for “bureau of public health,” added “tenant or occupant” to the end of the next-to-last sentence, and added the last sentence; in (f), substituted “gas facilities or stormwater systems or stormwater management programs” for “stormwater systems or stormwater management systems or gas facilities” and added the proviso to the end; and made minor stylistic changes.

§ 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; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted “for stormwater systems ... federal and state requirements” following the first phrase.

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

In any case where a public service district owns a water, sewer, stormwater 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, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater 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, stormwater 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, stormwater 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; 2002, c. 272.)

Effect of amendment of 2002. — Acts “stormwater” following “sewer” in the section 2002, c. 272, effective June 7, 2002, inserted heading and throughout the section.

§ 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, stormwater systems or stormwater management 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, stormwater system or associated stormwater management 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; 2002, c. 272.)

Effect of amendment of 2002. — Acts 2002, c. 272, effective June 7, 2002, inserted “stormwater systems or stormwater management systems” and “stormwater system or associated stormwater management system.”

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

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may 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 [§ 16-13A-13], twenty [§ 16-13A-20] or twenty-four [§ 16-13A-24] of this article, without the prior consent and approval of the Public Service Commission.

(b) 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, a verified statement by the board members that the public service district has complied 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; or
- (2) completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

- (1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;
- (2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;
- (3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or
- (4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.

(e) 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. (1969, Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159; 2003, c. 194; 2005, c. 193.)

Effect of amendment of 2003. — Acts 2003, c. 184, effective June 5, 2003, added subsection designations; inserted (c) and (d); in (c) substituted “a verified statement by the board members that the public service district has complied” for “evidence of compliance,” deleted “in the past two years requiring engineering services” from the end of subdivision (1), and deleted “within the past two years” preceding “requiring engineering services” in subdivision (2); and rewrote the final paragraph of the

section, deleting former subdivisions (a) through (e) regarding requirements for legal advertisements giving public notice of projects.

Effect of amendment of 2005. — Acts 2005, c. 193, effective July 8, 2005, deleted the second paragraph in (e), pertaining to pre-filing of plans by the public service district; and made minor stylistic changes.

ALR references. — Remedies for sewage treatment plant alleged or deemed to be nuisance, 101 ALR5th 287.

ARTICLE 13C.

DRINKING WATER TREATMENT REVOLVING FUND ACT.

16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.

Code of State Rules References. — Drinking water treatment revolving fund, 64 CSR 49, effective June 1, 1998.

Public water systems capacity development, 64 CSR 61, effective May 14, 1999.

ARTICLE 13E.

COMMUNITY ENHANCEMENT ACT.

<p>16-13E-1. 16-13E-2. 16-13E-3. 16-13E-4.</p>	<p>Short title. Definitions. Power and authority of counties and municipalities to create and establish community enhancement districts. Petition for creation or expansion of community enhancement district; petition requirements. Notice to property owners before creation or expansion of community enhancement district and construction or acquisition of community enhancement district; petition requirements.</p>	<p>Sec. 16-13E-5.</p>
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IN RE: CREATION OF A PROPOSED PUBLIC SERVICE DISTRICT IN CLAY COUNTY TO BE NAMED
 CLAY COUNTY PUBLIC SERVICE DISTRICT

The Clay County Commission on this the 29th day of April, 1991 doth hereby set a public meeting to be held on the 28th day of May, 1991 at 10:00 A.M. in the New Clay County Courthouse - 207 Main Street - Clay, West Virginia for the purpose of creating a proposed public service district to be named Clay County Public Service District as outlined on a map that will be a part of this legal advertisement and bounded and described as follows:

Beginning at a point at the northeast corner of the Boundary of the Maysel Public Service District, said point having a latitude N 38° 30' 00" and a longitude W 81° 05' 27" and being in the Clay County Boundary;

Thence, in a northeasterly direction 2.09 miles to a point west of Mt. Home having a latitude of N 38° 31' 15" and a longitude of W 81° 03' 45";

Thence, in a northerly direction 5.64 miles to a point northwest of Big Otter having a latitude of N 38° 36' 15" and a longitude of W 81° 03' 45";

Thence, in a easterly direction 3.38 miles to a point having a latitude of N 38° 36' 15" and a longitude of W 81° 00' 00";

Thence, in a southerly direction 7.10 miles to a point having a latitude of N 38° 30' 00" and a longitude of W 81° 00' 00";

Thence, in a southwesterly direction 4.50 miles to a point having a latitude of N 38° 28' 18" and a longitude of W 81° 04' 30";

Thence, in a northwesterly direction 0.92 miles to a point having a latitude of N 38° 28' 34" and a longitude of W 81° 05' 27";

Thence, in a northerly direction 1.65 miles to the Beginning Point, containing a total area of 30.66 square miles located in Clay County, West Virginia.

There is Reserved and Excepted from this description all of the real estate, whether in a metes and bounds description or as otherwise described and incorporated, comprising the town of Clay, Clay County, West Virginia, as the same has been described, defined, and/or laid out on maps in the office of the Assessor of Clay County, West Virginia on April 15, 1991.

This Public Service District is established for water only. It is the intention of the Commission to expand the lines of this project at a future date. It is the further intention of the Commission to withdraw the County-wide project lines as set out in the County Plan. The Clerk of this Commission will notify the Public Service Commission that they desire to withdraw the lines in case Number 90-057-PSWD-PC. Motion is made by R.T. Sizemore, Jr and seconded by Jerry C. Bird. Motion carried.

APPROVED: APRIL 29, 1991


 CLAY COUNTY COMMISSION

PRESIDENT

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, Aris S. Moore, Clerk of the County Commission of Said
County and in Said State, do hereby certify that the foregoing is a
true copy from the record.

Given under my hand and the seal of Said Commission this

17th day of February 19 93

Aris S. Moore CLERK
CLAY COUNTY COMMISSION
CLAY COUNTY, WEST VIRGINIA

By: Judy L. Moore, Deputy

The County Commission of Clay County, West Virginia met in Regular Session this the 28th day of May, 1991. Present were Jerry Bird, President and Ronald Haynes and R.T. Sizemore, Jr., Commissioners. The following business was transacted:

IN RE: FORMATION OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT.

Meeting was held as advertised concerning the formation of the Clay County Public Service District. The President asked for any objections or comments from the public. There being no objections Ronald R. Haynes made a motion that the Clay County Public Service District is now officially formed. Motion carried. All aye.

APPROVED: MAY 28, 1991



CLAY COUNTY COMMISSION PRESIDENT

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, A. B. Moore, Clerk of the County Commission of Said
County, do hereby certify that the foregoing is a
true copy of the records

Given under my hand and the seal of Said Commission this

17th day of February, 1993

A. B. Moore CLERK
COUNTY COMMISSION
CLAY COUNTY, WEST VIRGINIA

By: Judy R. Moore, Deputy

ORIGINAL

ENTERED

08, 91-5 Page

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
11-21-91

Entered: November 1, 1991

CASE NO. 91-287-PWD-PC

CLAY COUNTY COMMISSION
Petition to dissolve Maysel Public
District and to transfer same to
Town of Clay.

CASE NO. 91-404-PWD-PC

CLAY COUNTY COMMISSION
Petition for approval of the creation
of Clay County Public Service District
and for correction of boundaries of Maysel
Public Service District.

RECOMMENDED DECISION

PROCEDURE

On April 30, 1991, the Clay County Commission filed a petition seeking approval of the Clay County Commission's Order transferring all assets and operation of the Maysel Public Service District (Maysel PSD) to the Town of Clay and then dissolving the District.

On June 7, 1991, the Clay County Commission filed a petition seeking approval of the Clay County Commission's Order creating the Clay County Public Service District (Clay County PSD) and amending the boundary lines of the Maysel PSD.

Because the two (2) issues involve Orders of the Clay County Commission which must be reviewed by the Public Service Commission under West Virginia Code (Code) §16-13A-2, Administrative Law Judge Ann Rodak thereby consolidated Case No. 91-287-PWD-PC and Case No. 91-404-PWD-PC, and set the cases for hearing.

On September 22, 1991, this matter came on for hearing before Administrative Law Judge Ronnie Z. McCann (ALJ). The Clay County Commission was present at the hearing by its members, Jerry C. Bird, R. T. Sizemore, Jr., and Ronald Haynes. The Maysel PSD was present by its Chairman, Donald H. Jarvis. The Town of Clay was present by its Mayor, Carl Don Moore, and by its Water Director, Richard Williams. Commission Staff appeared by Counsel, Staff Attorney Drexel M. Vealey, Esquire, and by Utility Financial Analyst William A. Nelson.

MSW

EVIDENCE

No testimony was adduced at hearing. The Clay County Commission presented one exhibit and Commission Staff presented two exhibits. All three exhibits were received into evidence. No one appeared at the hearing in opposition to the proposal set forth in the two instant cases. (Tr., pp. 3-16).

County Commission Exhibit No. 1 comprises a certificate of publication which shows that the Notice of Hearing was published in The Clay Herald, a newspaper published and of general circulation in Clay County, on August 26, 1991. (Tr., p. 8).

Staff Exhibit No. 1 comprises the Final Staff Memorandum, dated June 5, 1991, and filed June 7, 1991, from Utility Financial Analyst William A. Nelson, in Case No. 91-287-PWD-PC.

Mr. Nelson explained that the essence of Case No. 91-287-PWD-PC was the Clay County Commission's intention to transfer all of the assets and the operation of the Maysel PSD unto the Town of Clay. He noted that Maysel PSD has approximately \$270,000 in assets, with a bond indebtedness of \$9,400 secured by an escrow resolution dated June 17, 1988. He stated that the bondholders had been notified of the proposed transfer and were in agreement. He noted that the Town of Clay proposes to maintain the current rates for Maysel PSD's present customers after the transfer. He stated that Staff recommends approval of the proposed transfer and the proposed dissolution. (Staff's Exhibit No. 1).

Staff's Exhibit No. 2 comprises the Final Staff Internal Memorandum from Mr. Nelson, dated June 28, 1991, and filed July 2, 1991, in Case No. 91-404-PWD-PC. (Tr., p. 15).

Mr. Nelson explained that the purpose for Case No. 91-404-PWD-PC was two-fold. First, the County Commission seeks to create the Clay County Public Service District. Second, the County Commission seeks to make corrections to the Maysel PSD's legal boundaries before it is transferred to the Town of Clay. Staff has recommended both actions be approved. (See, Staff Exhibit No. 1).

DISCUSSION

Upon consideration of all of the above, the ALJ will grant approval in Case No. 91-287-PWD-PC for the transfer of all of the assets and operations of the Maysel Public Service District unto the Town of Clay, with the legal boundary thereof as corrected in Case No. 91-404-PWD-PC. Also, the ALJ will approve the creation of the Clay County Public Service District, and will approve the corrections to the legal boundaries of the Maysel Public Service District prior to its transfer unto the Town of Clay.

FINDINGS OF FACT

1. The Clay County Commission filed a petition with the Public Service Commission, pursuant to Code §16-13A-2, seeking to transfer all of the assets and the operation of the Maysel PSD unto the Town of Clay, and to thereupon dissolve the Maysel PSD. (See, Petition, filed April 30, 1991, in Case No. 91-287-PWD-PC).

2. The Clay County Commission filed a petition with the Public Service Commission, pursuant to Code §16-13A-2, seeking to create the Clay County Public Service District and to correct the boundaries of the Maysel PSD. (See, Petition filed June 7, 1991, in Case No. 91-404-PWD-PC).

3. The Clay County Commission published a Notice of Hearing in The Clay Herald on August 26, 1991, and no one appeared at the hearing in opposition to the proposals of the instant case. (See, County Commission Exhibit No. 1, Tr., pp. 3-17).

4. Staff has recommended approval of the proposals in both Case Nos. 91-287-PWD-PC and 91-404-PWD-PC. (See, Staff Exhibit Nos. 1 and 2).

CONCLUSION OF LAW

Since the Clay County Commission published a Notice of Hearing in The Clay Herald on August 26, 1991, and no one appeared at the hearing in opposition to the proposals of the instant case; and since Staff has recommended approval of the proposals in both Case Nos. 91-287-PWD-PC and 91-404-PWD-PC, it is reasonable to correct the boundaries of the Maysel Public Service District as proposed by the Clay County Commission; to transfer all of the assets and the operation of the Maysel Public Service District unto the Town of Clay; to dissolve the Maysel Public Service District; and to create the Clay County Public Service District.

ORDER

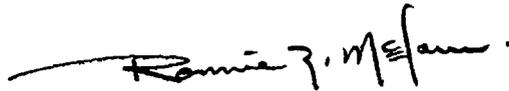
IT IS, THEREFORE, ORDERED that the petitions filed with the Public Service Commission, pursuant to Code §16-13A-2, by the Clay County Commission on April 30, 1991, in Case No. 91-287-PWD-PC, to transfer all of the assets and operations of the Maysel Public Service District unto the Town of Clay and to thereby dissolve the Maysel Public Service District, and on June 7, 1991, in Case No. 91-404-PWD-PC, to correct the boundaries of the Maysel Public Service District prior to its transfer unto the Town of Clay and to create the Clay County Public Service District, be, and they hereby are, approved.

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.



Ronnie Z. McCann
Administrative Law Judge

RZM:jas

REGULAR CONTINUED SESSION

June 30, 1995

The County Commission of Clay County, West Virginia met in Regular Continued Session this the 30th day of June, 1995. Present were R.T. Sizemore, Jr., President and James Sams, Commissioner. Ronald Haynes being absent. The following business was transacted:

BEFORE THE COUNTY COMMISSION OF CLAY COUNTY

A RESOLUTION AND ORDER PROPOSING A CHANGE OF THE
BOUNDARY LINES OF CLAY COUNTY PUBLIC SERVICE DISTRICT

WHEREAS, The County Commission of Clay County established the Clay County Public Service District ("District") in 1990; and

WHEREAS, the County Commission now sees a need to change the boundary lines of the Clay County Public Service District to enlarge the District; and

WHEREAS, West Virginia Code 16-13A-2 provides that a County Commission may create enlarge or change the boundary lines of a public service district; and

WHEREAS, it is now deemed desirable by said County Commission to adopt a Resolution and Order proposing the change of the boundary lines of the Clay County Public Service District for the provision of water service within its authorized area.

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

That the County Commission of Clay County, West Virginia, upon its own motion, proposes to enlarge the boundary lines of Clay County Public Service District, located within Clay County, West Virginia, for the provision of water service.

That the County Commission of Clay County, West Virginia, upon its own motion, proposes the change in the boundary lines to be more particularly defined as the following:

The area of Clay County beginning at Latitude 38 degrees 17'25"N which is located at Bintree at Ida Baptist Church. All of the area north of Latitude 38 degrees 17'25"N that is currently in Gauley River Public Service District is proposed to be included in Clay County Public Service District.

The County Commission of Clay County, West Virginia shall hold a hearing on the proposed boundary change of the Clay County Public Service District on the 25th day of July, 1995, in the Clay County Courthouse, County Commission Room in Clay at 5:00 o'clock.p.m.

That the Clerk of the County Commission shall cause notice of hearing and a description of all of the territory proposed to be included in the boundary change to be published as a Class I legal advertisement at least ten (10) days prior to the hearing.

That the County Commission of Clay County shall post the notice of the hearing and description of the boundary change in at least five (5) conspicuous places within the proposed boundary change of the public service district territory.

That the Clerk of the County Commission shall cause a copy of this Resolution and Order to be filed with the Executive Secretary of the Public Service Commission not less than ten (10) days prior to the hearing set forth herein.

ENTERED into the permanent record of Clay County, West Virginia, this 30th day of June, 1995.

R. J. Seymour
PRESIDENT
James Sams
COMMISSIONER

COMMISSIONER

ATTEST:

Judy R. Moore
CLERK

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, Judy R. Moore, Clerk of the County Commission of Said County and in Said State, do hereby certify that the foregoing is a true copy from the record.

Given under my hand and the seal of Said Commission this

6th day of Feb, 19 98
Judy R. Moore CLERK
CLAY COUNTY COMMISSION
CLAY COUNTY, WEST VIRGINIA

BEFORE THE COUNTY COMMISSION OF CLAY COUNTY
A RESOLUTION AND ORDER TO CHANGE THE BOUNDARY LINES OF
CLAY COUNTY PUBLIC SERVICE DISTRICT

WHEREAS, The County Commission of Clay County, West Virginia, did heretofore, by Resolution and Order adopted on June 30, 1995, propose a change in the boundary lines of the Clay County Public Service District to provide water and sewer service, and

WHEREAS, by said June 30, 1995 Resolution and Order, the County Commission did set a hearing on the proposed changes for July 25, 1995, required notice of said hearing be given by Class I legal publication and by posting of notice in at least five (5) conspicuous places within the territory of the public service district, and required the Clerk of the County Commission to cause a copy of the Resolution and Order to be filed with the Executive Secretary of the Public Service Commission, and

WHEREAS, notice of the June 30, 1995 hearing has been given in the manner provided and required by said Resolution and Order and by West Virginia Code (16-13A-2 and all interested parties have been afforded an opportunity of being heard for and against the changes in the boundary lines of the Clay County Public Service District, but no written protest has been filed by the requisite number of qualified voters registered and residing within the existing boundaries of the public service district, however Delford Acree was present and objected to the

aforementioned proposed because he is in the process of having the water line extended to his property which is within the proposed boundary change. Mr. Acree stated that the Gauley River Public Service District has agreed to supply him water. Representatives of the Gauley River Public Service District were present and they concurred with Mr. Acree. The Clay County Commission has given due consideration to all matters for which such hearing was offered; and

WHEREAS, it is now deemed desirable by said County Commission to adopt a Resolution and Order to change the boundary lines to concur with the request of Mr. Acree and more particularly defined as the following:

All property lying North and toward the Town of Clay from the intersection of Latitude $38^{\circ}17'49.5''$ Longitude $81^{\circ}11'31''$. Said intersection being approximately .2 mile toward Clay from Big Hollow. Big Hollow is to remain within the boundary lines of the Gauley River Public Service District.

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

1. That the County Commission of Clay County, West Virginia, upon its own motion, subject to the approval of the Public Service Commission of West Virginia, does hereby change the boundary lines of the Clay County Public Service District as heretofore set out.

2. That the Clerk of the County Commission shall cause a copy of this Resolution and Order to be filed with the Executive Secretary of the Public Service Commission within ten (10) days

ENTERED

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
6-4-96

Entered: May 15, 1996

CASE NO. 95-0606-PWD-PC

CLAY COUNTY COMMISSION
Petition to revise boundaries of Clay
County Public Service District.

CASE NO. 95-0927-PSWD-PC

FAYETTE COUNTY COMMISSION
Petition to reduce boundaries of Gauley
River Public Service District.

RECOMMENDED DECISION

On July 5, 1995, the Clay County Commission filed a petition with the Public Service Commission for approval to expand the boundaries of the Clay County Public Service District in accordance with West Virginia Code §16-13A-2. This filing was designated as Case No. 95-0606-PWD-PC.

On September 25, 1995, the Fayette County Commission filed a petition with the Public Service Commission for approval to reduce the boundaries of the Gauley River Public Service District within Clay County and Fayette County for the purpose of enlarging the boundary lines of the Clay County Public Service District to provide water and sewer service pursuant to West Virginia Code §16-13A-2. This filing was designated as Case No. 95-0927-PWD-PC.

By Order dated December 4, 1995, these matters were consolidated for decision and referred to the Division of Administrative Law Judges for a decision to be rendered on or before May 24, 1996.

In a Final Staff Internal Memorandum filed January 24, 1996, Meyishi P. Blair, Esquire, Staff Attorney, advised that in its petition filed June 30, 1995, the Clay County Commission proposed to expand the boundary lines of the Clay County Public Service District. Ms. Blair explained that the purpose of the expansion is to annex into the Clay County Public Service District, a portion of Clay County that currently lies within the boundaries of the Gauley River Public Service District, but is not presently being provided with water and sewer service by the Gauley River Public Service District or any other entity.

On September 25, 1995, the Fayette County Commission filed a separate petition seeking approval of the reduction of the Gauley River's boundaries to coincide with the Clay County Public Service District's expansion. This

petition by the Fayette County Commission was subsequently consolidated with the petition of the Clay County Commission. Staff recommended that since the petitions of the County Commissions are in compliance with West Virginia Code §16-13A-2, approval of the consolidated petitions should be given after the required hearings are held in Clay and Fayette Counties.

By Order dated February 14, 1996, these matters were set for hearings to be held in the County Commissioner's Courtroom, Clay County Courthouse, Clay, West Virginia, and the County Commissioner's Courtroom, Fayette County Courthouse, Fayetteville, West Virginia, respectively.

The hearing was held as scheduled in Clay County on April 18, 1996. Appearing at the hearing in Clay was Mr. R. T. Sizemore, Jr., President of the Clay County Commission. No one appeared in protest to the petition. (Tr., pp. 2-3).

The hearing scheduled to be held in Fayetteville on April 18, 1996, was not held, and was rescheduled by Order dated April 22, 1996, to be held in the County Commissioner's Courtroom, Fayette County Courthouse, Fayetteville, West Virginia, on May 8, 1996. The Order of February 14, 1996, setting these matters for hearing required the Fayette and Clay County Commissions to publish a notice of hearing, once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Fayette and Clay Counties. Proper affidavits of publication were submitted reflecting that publication had been made in accordance with the Commission's requirements in Clay County.

The Order of April 22, 1996, required that publication in Fayette County be made by the Commission's Executive Secretary.

The hearing in Fayetteville was held as scheduled on May 8, 1996.

Appearing at the hearing in Fayette County was Meyishi P. Blair, Esquire, Staff Attorney. No one appeared in protest to the petition.

DISCUSSION

This case arises from petitions filed by the Clay and Fayette County Commissions. The purpose of the Clay County Commission petition was to annex into the Clay County Public Service District a portion of Clay County that currently lies within the boundaries of the Gauley River Public Service District, and is not being provided water or sewer service by the Gauley River Public Service District. The Fayette County Commission also filed a petition to reduce the boundaries of the Gauley River Public Service District's boundaries to coincide with the expansion of the boundaries of the Clay County Public Service District. Commission Staff, after review of the petitions, recommended approval of the consolidated petitions.

These two cases were consolidated for hearing and decision purposes and hearings were scheduled to be held in these cases on April 18, 1996. On that date, the hearing in Clay County was held as scheduled on April 18, 1996, and no one appeared in protest after proper publication had been made, in accordance with the Commission's requirements. The hearing scheduled to

be held in Fayette County on May 8, 1996, was held and no one appeared in protest, after proper publication had been made.

Since Staff has recommended approval of the petitions in these consolidated cases and proper publication was made and no one appeared in protest at the hearings held in either Clay or Fayette Counties, the petitions of the Clay and Fayette County Commissions filed on July 5, 1996 and September 25, 1996, respectively, should be approved.

FINDINGS OF FACT

1. On July 5, 1995, the Clay County Commission filed a petition with the Public Service Commission for approval to expand the boundaries of the Clay County Public Service District in accordance with West Virginia Code §16-13A-2. (See, Petition).

2. On September 25, 1995, the Fayette County Commission filed a petition with the Public Service Commission for approval to reduce the boundaries of the Gauley River Public Service District within Clay County and Fayette County for the purpose of enlarging the boundary lines of the Clay County Public Service District to provide water and sewer service pursuant to West Virginia Code §16-13A-2. (See, petition).

3. By Order dated December 4, 1995, these two cases were consolidated for decision purposes. (See, Order dated December 4, 1995).

4. By Order dated February 14, 1996, hearings were scheduled to be held in both these cases on April 18, 1996, in Clay and Fayette Counties. Said Order also required that the Clay and Fayette County Commissions provide notice of the hearings scheduled for April 18, 1996, by publishing a Notice of Hearing, once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Clay and Fayette Counties. (See, Order dated February 14, 1996).

5. At the hearing held in Clay County, on April 18, 1996, the affidavit of publication was submitted showing that proper publication had been made in accordance with the Commission's requirements and no one appeared in protest to the petition. (See, Tr., pp. 2-3).

6. By Order dated April 22, 1996, the hearing in Fayette County was rescheduled to be held on May 8, 1996, and the Executive Secretary of the Commission was ordered to publish a Notice of Hearing, once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Fayette County. (See, Order dated April 22, 1996).

7. At the hearing held in Fayette County, on May 8, 1996, no one appeared in protest to the petition of the Fayette County Commission after proper notice had been given, as is evidenced by the Affidavit of Publication included in the case file. (See, Affidavits of Publication; transcript of proceedings held on May 8, 1996; and case file generally).

CONCLUSION OF LAW

The Administrative Law Judge is of the opinion and finds that, since proper notice was given of the hearings to be held on the petitions of the

Fayette and Clay County Commissions in both Clay and Fayette Counties, in accordance with the Commission's requirements, and no one appeared in protest to the petitions, the petitions of the Fayette and Clay County Commissions, as filed on September 25, 1995 and July 5, 1995, respectively, should be approved.

ORDER

IT IS, THEREFORE, ORDERED that the Orders of the Clay County Commission dated July 25, 1995 and November 7, 1995, expanding the boundaries of the Clay County Public Service District, in Case No. 95-0606-PWD-PC, be, and the same hereby are, approved.

IT IS FURTHER ORDERED that the Orders of the Fayette County Commission, dated October 13, 1995, and January 12, 1996, reducing the boundaries of the Gauley River Public Service District within Clay County and Fayette County, for the purpose of enlarging the boundaries of the Clay County Public Service District, to provide water and sewer service, pursuant to West Virginia Code §16-13A-2, in Case No. 95-0927-PWD-PC, be, and the same hereby is, approved.

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.



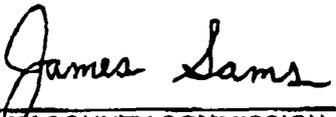
Robert W. Glass
Administrative Law Judge

RWG:jas

IN RE: RE-APPOINTMENT OF N. KEITH KING AS A MEMBER OF THE
CLAY COUNTY PUBLIC SERVICE DISTRICT.

This Commission does hereby re-appoint N. Keith King as a member of the Clay County public Service District. Term of office will be from September 1, 2000 to September 1, 2006. Said appointment is hereby in all respects approved.

APPROVED: AUGUST 22, 2000



PRESIDENT
CLAY COUNTY COMMISSION

IN RE: APPOINTMENT OF TEDDY UNDERWOOD TO CLAY COUNTY
PUBLIC SERVICE DISTRICT

This Commission does hereby appoint Teddy Underwood to Clay County public Service District replacing Earl Long. The term of office will expires September 1, 2010.

This appointment is hereby in all respects approved.

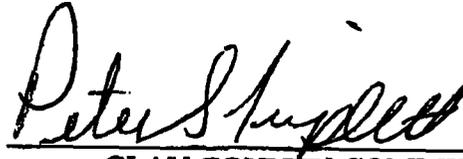
APPROVED: AUGUST 24, 2004


_____, PRESIDENT
CLAY COUNTY COMMISSION

**IN RE: SIMPSON NEAL APPOINTED TO CLAY COUNTY PUBLIC SERVICE
DISTRICT**

This Commission did on the 23rd. day of September, 2005 appoint Earl Elliott to fill Homer Triplett expired term of September 1, 2006. However Earl Elliott declined the appointment. We do hereby appoint Simpson Neal in this position and the term will expire on September 1, 2011.

APPROVED: OCTOBER 24, 2005


_____, PRESIDENT
CLAY COUNTY COMMISSION

Simpson Neal
7766 Clay Highway
Bickmore, WV 25019

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

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Clay County PSD to the best of my skill and judgment SO HELP ME GOD.

(Signature of affiant) Jody B. Anderson

Subscribed and sworn to before me, in said County and State, this the 25th day of August, 2004.

A. Michelle Deyton, Deputy

CLAY COUNTY, TO-WIT:

Be it remembered that on the 25th day of August, 2004 this oath was presented in the Clerk's Office of the County Commission of said County and recorded according to law.

Teste: Judy R. Moore
Clerk Clay County Commission

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, Corrie Workman, Clerk of the County Commission of said County, and in said State, do hereby certify that the foregoing is a true copy from the record.

Given under my hand and the seal of said Commission this 9th day of November, 2003.

Corrie Workman, CLERK
CLAY COUNTY COMMISSION
CLAY COUNTY, WEST VIRGINIA

By: Kathy White, Deputy Clerk

OATH OF OFFICE AND CERTIFICATE

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

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Clay Co. PSD Board to the best of my skill and judgment SO HELP ME GOD.

(Signature of affiant) *Simpson B Neal*

Subscribed and sworn to before me, in said County and State, this the 1st day of November, 2005.

Connie Workman

CLAY COUNTY, TO-WIT:

Be it remembered that on the 1st day of November, 2005, this oath was presented in the Clerk's Office of the County Commission of said County and recorded according to law.

Teste: *Connie Workman* *Clerk*
Clerk Clay County Commission

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS
I, Connie Workman, Clerk of the County Commission of said County, and in said State, do hereby certify that the foregoing is a true copy from the record.
Given under my hand and the seal of said Commission this 9th day of November, 2005.
Connie Workman CLERK
CLAY COUNTY COMMISSION
CLAY COUNTY, WEST VIRGINIA
By: *Kathy White*, Deputy Clerk

OATH OF OFFICE AND CERTIFICATE

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

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Clay Co. PSD to the best of my skill and judgment SO HELP ME GOD.

(Signature of affiant) *N. Keith King*
N. Keith King

Subscribed and sworn to before me, in said County and State, this the 18th day of November, 2005.

Connie Workman

CLAY COUNTY, TO-WIT:

Be it remembered that on the 18th day of November, 2005, this oath was presented in the Clerk's Office of the County Commission of said County and recorded according to law.

Teste: *Connie Workman*
Clerk Clay County Commission

OATH OF OFFICE AND CERTIFICATE

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

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Treasurer/Clay Co. PSD to the best of my skill and judgment SO HELP ME GOD.

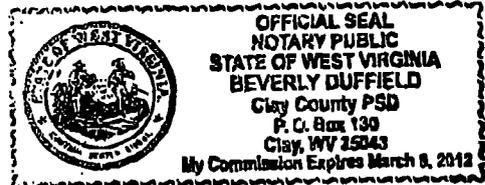
(Signature of affiant)

Cynthia A. Schoolcraft

Subscribed and sworn to before me, in said County and State, this the

28 day of NOVEMBER, 2005.

Beverly Duffield



CLAY COUNTY PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. The name of this Public Service District shall be CLAY COUNTY PUBLIC SERVICE DISTRICT (the "District").

Section 2. The principal office of the District will be located in Clay, West Virginia.

Section 3. The official seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Clay County Public Service District, and in the center "seal" as follows:

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

ARTICLE II

PURPOSE

Section 1. The District is organized and operated exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act").

ARTICLE III

MEMBERSHIP

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

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

Section 3. The District shall provide to the Public Service Commission of West Virginia, within 30 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, and such other information required under the Act.

Section 4. Each board member shall, within 6 months of taking office, successfully complete the training program established and administered by the Public Service Commission of West Virginia in conjunction with the West Virginia Department of Environmental Protection and the West Virginia Bureau for Public Health.

Section 5. 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 12 months after such board member's term has expired or after such board member has resigned from the Board.

Section 6. Salaries of the board members shall be established as provided in Chapter 16, Article 13A, Section 4 of the Act. The District shall certify the number of customers served to the Public Service Commission of West Virginia on the first day of July each year. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.

Section 7. 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.

ARTICLE IV

MEETINGS OF THE BOARD

Section 1. The members of the Board shall hold regular monthly meetings on such days of each month and at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Board may be called at any time by the Chairperson or by a quorum of the Board.

Section 2. At any meeting of the Board, a majority of the members of the Board shall constitute a quorum. Each member of the Board shall have one vote at any 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 of regular meetings shall be by letter or telephone. Unless otherwise waived, notice to members of each special meeting shall be by letter or telephone not less than 72 hours before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted at such meeting, and no business other than that stated in the notice shall be transacted at such special meeting.

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

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of these Rules of Procedure and in July of each year thereafter, the Board shall instruct the Secretary to, and the Secretary shall, post, and leave posted throughout the year to which it applies, at the regular meeting place of the Board and at the Clay County Courthouse, where notices customarily are posted, a notice setting forth the date, time and place of the Board's regularly scheduled meetings for the ensuing year. In addition, a copy of the agenda for each regularly scheduled meeting shall also be posted at the same location by the Secretary not less than 72 hours before such regular meeting is to be held.

The Board shall also instruct the Secretary to, and the Secretary shall, distribute to each of the newspapers and other news media listed below a notice identical to that posted:

News Media

Address

Clay County Free Press

P.O. Box 180
Clay, West Virginia 25043

A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed above, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail. In July of each year after the adoption of these Rules of Procedure, the Board shall review the above list and shall amend such list as needed, in the opinion of the Board, to reflect properly all the newspapers and other news media that customarily cover news of the area served by the Board. In addition, a copy of the agenda for each regularly scheduled meeting shall also be distributed to the news media by the Secretary not less than 72 hours before such regular meeting is to be held.

In the event of any modification to the date, time, place or agenda of a regularly scheduled meeting of the Board, notice of such modification shall immediately be given to the public and news media by posting at the places and distributing to the news media in the manner set forth above not less than 48 hours before such regular meeting is to be held. A copy of the notice of such modification shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 2. Notice of Special Meetings. Not less than 72 hours prior to the date set for any special meeting of the Board, the Board shall instruct the Secretary to, and the Secretary shall, post at the regular meeting place of the Board and at the Clay County Courthouse, where notices customarily are posted, a notice setting forth the date, time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of said notice, but not less than 72 hours prior to the date set for such special meeting, the Secretary shall distribute to each of the newspapers and other news media listed in Rule No. 1 hereof, a notice identical to that posted. Amendments made to such news media list, as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2. A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

A copy of such notice posted and distributed pursuant to this Rule No. 2 shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 3. Emergency Meetings. The Board may hold a meeting without providing the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of an emergency requiring immediate official action. The existence for such an emergency requiring immediate official action shall be determined by the Board and shall be attested to in a certificate by the Secretary describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be attached to and made a part of the minutes of such emergency meeting.

Rule No. 4. Executive Sessions. The Board may hold an executive session during a regular, special or emergency meeting in accordance with Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended. During the open portion of the meeting, prior to convening an executive session, the Chairperson shall identify the authorization under Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended, for holding the executive session and present it to the Board and to the general public, but no decision may be made in the executive session. An executive session may be held only upon a majority affirmative vote of the Board members present. The Board may hold an executive session and exclude the public only when a closed session is required for any of the actions permitted under Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended.

Rule No. 5. Minutes. The Board shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each Board member present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a Board member, the vote of each Board member, by name.

Rule No. 6. No Actions by Reference. Except as otherwise expressly provided by law, the Board may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting to understand what is being deliberated, voted or acted upon. However, this rule does not prohibit the Board from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are

available for public inspection at the meeting. The Board may not vote by secret or written ballot.

Rule No. 7. Broadcasting of Meetings. Except as otherwise provided in this rule, any radio or television station is entitled to broadcast all or any part of a Board meeting required to be open. The Board may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The Board shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference; provided, that if the Board, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the Board, acting in good faith and consistent with the purposes of this rule, may require the pooling of the equipment and the personnel operating it.

Rule No. 8. Telephonic Meetings. Board meetings may be held by telephone conference or other electronic means. All Board members participating by telephone or other electronic means must be audible to all those personally present.

Section 5. All meetings of any committee of the Board shall be subject to the Rules of Procedure set forth in Section 4 above.

ARTICLE V

OFFICERS

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

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

ARTICLE VI

DUTIES OF OFFICERS

Section 1. When present, the Chairperson shall preside as Chairperson at all meetings of the Board. He/She shall, together with the Secretary, sign the minutes of all meetings at which he/she shall preside. He/She shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him/her by the Board, by these Rules of Procedure, or prescribed by law. He/She shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements, or other documents 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 Chairperson is absent from any meeting, the remaining members of the Board shall select a temporary chairperson.

Section 3. 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. He/She shall, together with the Chairperson, sign the minutes of the meetings at which he/she is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other documents and papers of the Board. He/She shall also perform such other duties as may be required of him/her by law or as may be conferred upon him/her 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/her 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. The Treasurer shall keep and preserve all financial records of the District for 10 years and shall at all times have such records readily available for public inspection. At the end of his/her term of office, the Treasurer shall promptly deliver all financial records of the District to his successor in office. He/She shall also perform such other duties as may be required of him/her by law or as may be conferred upon him/her from time to time by the members of the Board. The Treasurer shall furnish bond in an amount to be fixed by the Board for the use and benefit of the District.

Section 5. No money may be paid out by the District except upon an order signed by the Chairperson and Secretary, or such other person or persons authorized by the Chairperson or the 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.

Section 6. The members and officers of the Board 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.

ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

Section 1. These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Board when a quorum is present and a majority of those present vote for the alteration, change, amendment or addition; but no such alteration, change, amendment or addition shall be made at any special meeting unless notice of the intention to propose such alteration, change, amendment or addition and a clear statement of the substance thereof be included in the written notice calling such special meeting.

Adopted this 15th day of December, 2005.



Chairperson and Member



Member

Member

CERTIFICATION

Certified a true copy of the Rules of Procedure duly adopted by the Public Service Board of CLAY COUNTY PUBLIC SERVICE DISTRICT on the 15th day of December, 2005.

Dated this 19th day of December, 2005.

[SEAL]



Shirley Neal
Secretary

12/14/05
006676/00302

COPY

**Minutes of the Meeting of the
Clay County Public Service District
January 21, 2005**

The Clay County Public Service District held it's regularly scheduled meeting at it's office located at 247 Main Street, Clay, WV. Those present were Keith King, Chairman; Homer Triplett, Secretary; Teddy Underwood, Commissioner; Cynthia Schoolcraft, Office Manager; Sam Taylor, Field Manager; Beverly Duffield, Billing Clerk.

The meeting was called to order by Chairman King. The opening prayer was given by Commissioner Underwood.

Chairman King called for a motion to approve the minutes of the December 14, 2004 meeting. Secretary Triplett so moved. Commissioner Underwood seconded the motion. The vote was three ayes and no nays. Motion carried.

The financial report was given by Ms. Schoolcraft, Office Manager. Income for the month of December was \$20,307.72 Expenses for the month of December were \$19,978.81 We began the month with \$652.42, leaving us with an ending balance of \$981.33.

Motion made by Secretary Triplett to approve the financial report and payment of the December expenses. Motion was seconded by Commissioner Underwood. The vote was three ayes and no nays. Motion carried.

The field report was presented by Sam Taylor. (See attached report.) Commissioner Underwood made a motion to approve field report as presented. Secretary Triplett seconded the motion. The vote was three ayes and no nays. Motion carried.

✓ Secretary Triplett made a motion to continue another year with the existing officers which are Keith King, Chairman, Homer Triplett, Secretary. Commissioner Underwood seconded the motion following a short discussion. The vote was three ayes and no nays.

There being no further business to come before the board, it accordingly adjourned.

PREPARED BY:

Cynthia Schoolcraft
Cynthia Schoolcraft, Office Manager

INSPECTED BY:

N. Keith King
N. Keith King, Chairman

Homer H. Triplett
Homer Triplett, Secretary

Teddy B. Underwood
Teddy Underwood, Commissioner

**Minutes of the Meeting of the
Clay County Public Service District
November 8, 2005**

The Clay County Public Service District held its regularly scheduled meeting at its office located at 247 Main Street, Clay, WV. Those present were Keith King, Chairman; Teddy Underwood, Commissioner; Simpson Neal, Commissioner; Sam Taylor, Field Manager; Cynthia Schoolcraft, Office Manager; Beverly Duffield, Billing Clerk, and two members of the public.

The meeting was called to order by Chairman King. The opening prayer was given by Commissioner Neal. Chairman King welcomed Mr. Simpson Neal as the newest member of the board.

Chairman King called for a motion to approve the minutes of the October 11, 2005 meeting. Commissioner Underwood so moved. Commissioner Neal seconded the motion. The vote was three ayes and no nays. Motion carried.

The financial report was given by Ms. Schoolcraft, Office Manager. Income for the month of October was \$22,329.34. Expenses for the month of October were \$22,301.99. We began the month with \$1,131.36, leaving us with an ending balance of \$1,158.71.

Motion made by Commissioner Underwood to approve the financial report and payment of the October expenses. Motion was seconded by Commissioner Neal. The vote was three ayes and no nays. Motion carried.

The field report was presented by Mr. Taylor. Following a discussion concerning meter testing, Commissioner Underwood made a motion to approve field report as presented. Commissioner Neal seconded the motion. The vote was three ayes and no nays. Motion carried. (see attached report)

As a Phase 1 update, Ms. Schoolcraft reported that Francesca Tan with Jackson & Kelly, our bond counsel, is trying to set up a preclosing, preconstruction meeting for all the parties involved with this project sometime in December. She is having a little trouble getting everyone's schedule to come together. She will let us know when she gets it set up. The PSD will need to set up an account at the Clay County Bank titled "Clay County Public Service District Series 2005 A Bonds Construction Trust Fund" for the money to be wired into. Mr. Jim Lane needs to have all property work completed by the meeting. We are currently trying to provide all documents needed by bond counsel. Mr. Hanna, attorney for the PSD, has provided the Public Service Commission with the bid tabulations for the project.

Ms. Schoolcraft provided the board members with information from the Public Service Commission concerning the mileage rates for reimbursement when personal vehicles are used for the company. Currently the PSD pays 33 cents per mile. The state rate is 48.5 cents per mile. There was no discussion and no action was taken.

Commissioner Underwood made a motion accept the annual report and audit report as presented by Bassett & Lowe. Commissioner Neal seconded the motion. The vote was three ayes and no nays. Motion carried.

Ms. Schoolcraft presented the board with a proposal from Commercial Insurance to provide a quote for Public Employees Liability and Employment Practices Liability coverage. Commissioner Underwood made a motion to request a quote from the company for this coverage. The motion was seconded by Commissioner Neal. The vote was three ayes and no nays. Motion carried.

After reviewing the application for insurance and the statement of values, Commissioner Underwood made a motion to accept the application and statement of values as presented. Commissioner Neal seconded the motion. The vote was three ayes and no nays. Motion carried.

Ms. Schoolcraft presented the board with information regarding the Local Emergency Planning Committee to which she was appointed as the representative for the Clay County PSD. She asked for a volunteer to replace her on this committee. Commissioner Neal was given the information and asked to give a report at the next meeting.

The employees requested to be paid for overtime worked instead of receiving comp time. The board informed the employees that the company cannot afford to do this.

The board was presented with a request from WV 211 for a donation. The board declined to do so at this time.

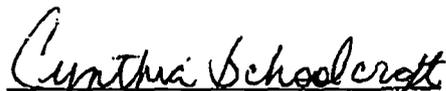
Commissioner Underwood made a motion to remove Homer Triplett's name from the bank accounts and to add Simpson Neal's name to the accounts. Chairman King seconded the motion. The vote was two ayes and no nays with Commissioner Neal abstaining. Motion carried.

✓ After Ms. Schoolcraft explained that the person who is elected as secretary must be present at the preclosing/preconstruction meeting, Commissioner Underwood made a motion to elect Simpson Neal as secretary for the board. Chairman King seconded the motion. The vote was two ayes and no nays with Commissioner Neal abstaining. Motion carried.

The board was presented with an offer to provide the company with a postage meter for three months without cost with further obligation. Commissioner Underwood made a motion to decline this offer. The motion was seconded by Secretary Neal. The vote was three ayes and no nays. Motion carried.

There being no further business to come before the board, it accordingly adjourned.

PREPARED BY:


Cynthia Schoolcraft, Office Manager

INSPECTED BY:


N. Keith King, Chairman


Teddy Underwood, Commissioner


Simpson Neal, Secretary

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 8th day of October, 2002.

CASE NO. 00-1327-PWD-CN

CLAY COUNTY PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to construct a water line extension to serve Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence.

COMMISSION ORDER

This is before the Commission upon the Clay County Public Service District's application for a certificate of convenience and necessity. The Commission shall grant the certificate with the conditions set forth herein.

BACKGROUND

On August 31, 2000, the Clay County Public Service District (District) prefiled for a certificate of convenience and necessity to construct a water line extension to serve Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence¹. The District proposes to construct approximately 104,100 linear feet of 8 inch, 6 inch, 4 inch, 3 inch and 2 inch water line, 4 water tanks, 36 fire hydrants, 3 booster stations and all necessary appurtenances. The project will provide water service to approximately 260 customers.

The total cost of project is estimated to be approximately \$3,906,000 and will be funded as follows:

West Virginia Infrastructure Council Grant	\$1,383,000
USDA Rural Utilities Service Grant	\$1,900,000
USDA Rural Utilities Service Loan	\$ 623,000

¹ This is the second filing for this project. The first filing, Case No. 98-0191-PWD-PF was dismissed by Recommended Decision dated September 18, 1998 (final October 8, 1998).

The District anticipates charging the following water rates for its customers: No bill will be rendered for less than \$34.02 per month for the first 3,000 gallons of usage and \$10.84 per thousand gallons for any usage over 3,000 gallons per month. The District proposes to charge a 10% penalty on all billings not paid within twenty days of the billing date and a \$300 connection fee for each new connection.

In support of its application, the District stated that the existing water supply consisted mainly of wells, with poor quality of water and inadequate quantity.

On March 8, 2002, Staff recommended that the prefiling be converted to an application for a certificate of convenience and necessity. Staff noted that there were still several items that the District needed to provide before final review could be completed. Those items were identified in Staff's second set of data requests to the District and filed on the same date.

On March 12, 2002, the case was converted to certificate application status. The District was directed to publish notice of the filing.

On March 26, 2002, the District filed an affidavit evidencing publication of the notice of filing on March 20, 2002, in the *Clay County Free Press*. On that same date, the District made a formal request for a waiver of the financial information required by Rule 42 of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle, 150 C.S.R. Series 2 (Tariff Rules). In support of the request, the District stated that its rates and charges would not increase and that it had previously filed certain financial information reflecting this fact.

On March 27, 2002, the District filed its responses to Staff's data requests.

On April 12, 2002, Staff filed its Initial Joint Staff Memorandum. Staff indicated that it was reviewing the District's responses to Staff's data requests and would file a final recommendation at the end of the public protest period.

On May 8, 2002, the Commission received a copy of a letter from the West Virginia Bureau for Public Health (BPH). The letter was addressed to the District's chairman. According to the BPH letter, the District had previously requested that the BPH remove language in the District's permit prohibiting the District from placing the distribution facilities into service until the new Clay water treatment plant is operational or until an alternate water source approved by the BPH was developed. The letter advised that the BPH was denying the District's request to modify its permit. The BPH believed that allowing the Town of Clay water treatment plant to increase its hours of operation would be a "major mistake." The BPH suggested a meeting between all interested agencies.

On June 7, 2002, Staff filed a Final Joint Staff Memorandum. Staff indicated that the Town of Clay (Clay) previously intended to sell its water plant to the new Clay Regional Public Service District (Regional District). The Regional District was in the process of formation so it could consolidate the existing public service districts in Clay County. The sale of Clay's water plant was a requirement for the new Regional District plant to be constructed. Staff indicated that it had reason to believe that Clay no longer desired to pursue the sale. Because Clay's water plant is the only available source of water, Staff stated it had no alternative but to recommend that the case be dismissed. However, Staff also suggested that a meeting take place between the funding agencies, Clay, the Clay County Commission, the Public Service Commission, the BPH and any other interested agencies to resolve the water supply issue.

On June 10, 2002, the District filed a letter objecting to dismissal. The District stated that it was in the process of resubmitting an application to the West Virginia Infrastructure and Jobs Development Council (WVIJDC) seeking revised funding for the project. The District believes that dismissal would cause significant delays and unnecessary costs for the project.

On July 12, 2002, the Commission entered an order requiring the District to meet with Commission Staff, Clay, the Clay County Commission, the BPH, the relevant funding agencies and any other interested agencies within thirty (30) days to develop a plan to resolve the water supply issue.

On August 12, 2002, the District filed a letter indicating that a meeting was held as directed. The District proposed the following plan:

1. Obtain a certificate of convenience and necessity with the following stipulations:
 - a. Construction will not be undertaken until such time as the conditions listed in the BPH permit have been satisfied with respect to the source of supply issue.
 - b. Should the BPH allow the project to proceed to construction with the Town of Clay continuing as the sole source of supply to the District, the District is requesting that the certificate order contain appropriate language to allow all the new customers to be served by the District with the proposed project to only be temporarily supplied source water by the Town of Clay until such time as an adequate alternative source of supply is available to the District, satisfactory to the BPH.

2. Obtain Commission approval of an engineering agreement for the preparation of a preliminary report to evaluate the following alternatives for supplying source water to the District for current or future needs:

- a. Construction of water treatment plant(s) by the District to serve as sole or partial source of water for the District.
- b. Connection(s) to the Clay-Roane PSD system to purchase and/or sell source water for all or a portion of the District's needs.

On August 20, 2002, Staff filed its Second Final Joint Staff Memorandum. Staff concluded that the project was necessary in order to serve many customers who are without water and would provide limited fire protection to some residents. Staff believed that the project would also provide necessary infrastructure for economic development in Clay County. Staff indicated that the proposed project was convenient in that it does not financially burden the existing and potential new customers of the District, provides a safe, reliable source of drinking water and improves the value of the property in the area. Further, Staff concluded that the project conforms with the rules and regulations of the Commission.

According to Staff, the construction cost per customer is \$15,023. This cost would be considered very high. However, the project is funded with over 84% grant funds. The District will finance the project with grants from the WVJDC in the amount of \$1,183,000 and from the Rural Utilities Service (RUS) in the amount of \$1,900,000 and an RUS loan in the amount of \$623,000. The interest rate of the loan is 4.5% for 40 years. The resulting monthly debt cost per new customer for the project is \$13.08. The project will not require an increase to the District's rates. The minimum monthly bill, based upon 3,000 gallons, will be \$34.02.

The project proposes to serve 260 customers. At the time of filing the certificate application, the District reported that it had 227 signed user agreements on file with most deposits paid. However, a recent fire at the District's office destroyed these records. Staff indicated that these records would need to be re-established prior to project initiation. Staff also noted that the project would require approximately 350 right of way agreements. At the time of filing, the District had acquired a majority of the agreements. Due to the fire, many of the signed agreements that had not yet been recorded in the Clay County courthouse were destroyed. Staff indicated that prior to project initiation, those records would need to be re-established as well.

Staff made several recommendations regarding the project details. In response to data requests, the District provided an estimate of \$18,200 for adding electronic read meters to the project. Staff recommended that the electronic read meters be added to the project prior to bid so that the District would be compatible with the planned Regional plant meter reading procedures. Staff also recommended that the District require its design engineer to resize the new lines in the locations where the new lines are to be installed parallel to existing lines that are to remain in service. Staff indicated that this would eliminate the possibility that future leaks would be difficult to find and correct. Staff also recommended that the District add to the project pump run time telemetry and/or meters for each section of the system. According to Staff, this low cost addition would be very useful in isolating areas which develop unusual unaccounted for water usage and would result in savings for the District.

Staff stated that the biggest obstacle to the project moving forward was the unresolved source of supply issue. Staff indicated that the Clay lines have been repaired and had significantly reduced leakage. Staff believed that a large amount of excess capacity existed from the Clay plant and would be available to serve this project and a Clay-Roane Public Service District extension project. According to Staff, the BPH is reluctant to grant approval of the project with Clay as the water supplier due to the length of the water purchase contract between Clay and the District. In 1993, Clay and the District entered into a water purchase contract for a term of forty (40) years. However, Staff is of the opinion that the Commission may make a finding that the 1993 contract does not prevent the District from purchasing water from a new plant once it is built and becomes operational.

Staff recommended that the District be granted a certificate of convenience and necessity and be granted a waiver of the requirement to file a Rule 42 Exhibit; approval to accept the WVIJDC grant, RUS grant, and RUS loan; and approval of the proposed rates and charges. Staff requested that the Commission make an express finding that the 1993 water purchase contract does not prevent the District from purchasing water from the new regional plant once it is built. Staff also recommended that the District review the design issues raised by Staff with the District's design engineer and that upon completion of bidding, bid summaries be provided to Staff for review.

As of the date of this order no protests have been filed.

DISCUSSION

At the outset, the Commission notes that W. Va. Code § 24-2-11 provides, in pertinent part, as follows:

- (a) No public utility . . . shall begin the construction of any plant . . . for furnishing to the public any [utility] service . . . unless and until it shall obtain from the public service

commission a certificate of convenience and necessity requiring such construction Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no protest is received within thirty days after the notice is given, may waive formal hearing on the application.

Furthermore, in considering a certificate application, the Commission must assess whether the general public convenience will be served and assess the public necessity for the project. Sexton v. Public Service Commission, 188 W.Va. 305, 423 S.E.2d 914 (1992).

Upon review, the Commission concludes that the project is needed in order to serve many customers who are without water or are served by wells with poor quality or inadequate quantity. The project will also provide limited fire protection. Moreover, the Commission concludes that the general public convenience will be served by this project since the project is 84% grant funded and will not financially burden the District's customers or require an increase in the District's rates.

With that said, the Commission must address the issue of water supply for this project. The Commission "has the authority to supervise, regulate, modify or approve a contract between public utilities subject to its jurisdiction which affects the service rendered to the public. . ." Preston County Light & Power Co. v. Renick, 145 W. Va. 115, 113 S.E.2d 378 (1960). Further,

all contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary. . . although an otherwise valid contract is binding on the parties to it until a departure from such contract has been directed by competent authority. Id.

In exercising its regulatory authority, the Commission exercises continued oversight of contracts between utilities. This includes the continuing assessment of the reasonableness thereof and the public interest served thereby.

Both the District and Staff are requesting the Commission to make a specific finding that the water purchase contract between Clay and the District does not prevent the District from purchasing water from a new plant once it is built and becomes operational. Although the contract may provide for its termination upon notice by either party, the Commission

would stress that this "contractual right" involves a public interest determination that could be subject to the Commission's review. It is not appropriate or necessary for the Commission to make such a determination at this time. However, the Commission shall, if necessary, take any action in the future based upon the circumstances presented in order to protect the public interest.

Based upon all of the foregoing, the Commission will 1) grant a certificate of convenience and necessity to the District to construct the project more specifically described above; 2) approve the financing for the project described above; and 3) grant a waiver of the requirement to file a Rule 42 Exhibit.

The Commission shall approve the proposed and Staff recommended rates and charges with the following modification:

The "INCREMENTAL COST OF WATER PRODUCED." provision in Staff's recommended rates reads as follows:

\$3.92 per thousand gallons. To be charged for all water bills in excess of the customer's historical usage when the bill reflects unusual consumption which is attributed to eligible leakage on customer's side of the meter.

The Commission shall, in this proceeding and in other tariff related proceedings where appropriate, modify such language to read as follows:

\$3.92 per thousand gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

The Commission shall also require the District to review the design issues raised by Staff in its Second Final Joint Staff Memorandum, and set forth above.

The District shall not begin construction of the project until the District has satisfied the conditions in the BPH permit regarding the source of supply.

The District shall be required to request a reopening of this case should there be any changes in the plans, scope and terms of financing of the project.

FINDINGS OF FACT

1. The Clay County Public Service District (District) filed for a certificate of convenience and necessity to construct a water line extension to serve Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence. The District pre-filed its application on August 31, 2000.

2. The total cost of project is estimated to be approximately \$3,906,000. The District will finance the project with grants from the WVIJDC in the amount of \$1,183,000 and from the Rural Utilities Service (RUS) in the amount of \$1,900,000 and an RUS loan in the amount of \$623,000.

3. The District stated that the project was needed because the existing water supply consisted mainly of wells, with poor quality of water and inadequate quantity.

4. The District properly published notice of the project, and the protest period has expired without any protests being filed.

5. The District requested that the BPH remove language in the District's permit that prohibits the District from placing the proposed distribution facilities into service until a new Clay water treatment plant is operational or until an alternate water source approved by the BPH was developed.

6. The BPH denied the District's request to modify its permit

7. Staff concluded that the project was necessary in order to serve many customers who are without water and would provide limited fire protection to some residents. Staff believed that the project would also provide necessary infrastructure for economic development in Clay County. Staff indicated that the proposed project was convenient in that it does not financially burden the existing and potential new customers of the District, provides a safe, reliable source of drinking water and improves the value of the property in the area. Further, Staff concluded that the project conforms with the rules and regulations of the Commission.

8. Staff recommended that the District be granted a certificate of convenience and necessity and be granted a waiver of the requirement to file a Rule 42 Exhibit; approval to accept the WVIJDC grant, RUS grant, and RUS loan; and approval of the proposed rates and charges. Staff recommended that the District review the design issues raised by Staff with the District's design engineer and that upon completion of bidding, bid summaries be provided to Staff for review.

9. Staff requested that the Commission make an express finding that the 1993 water purchase contract does not prevent the District from purchasing water from the new regional plant once it is built.

CONCLUSIONS OF LAW

1. The Commission concludes that the project is needed in order to serve many customers who are without water or are served by wells with poor quality or inadequate quantity and will provide limited fire protection.

2. The Commission concludes that the general public convenience will be served by this project since the project is 84% grant funded and will not financially burden the District's customers or require an increase in the District's rates.

3. In exercising its regulatory authority, the Commission exercises continued oversight of contracts between utilities. This includes the continuing assessment of the reasonableness thereof and the public interest served thereby. The Commission shall continue its oversight of the water purchase contract between Clay and the District and take any necessary actions in the future based upon the circumstances presented.

4. Pursuant to W. Va. Code § 24-2-11 and Sexton v. Public Service Commission, 188 W.Va. 305, 423 S.E.2d 914 (1992), a certificate of convenience and necessity will be granted. However, the District shall not begin construction of the project until the District has received approval from the BPH regarding the source of the water supply. The District shall also review the design issues raised by Staff in its Second Final Joint Staff Memorandum.

5. The Commission concludes that it is reasonable to grant a waiver of the requirement to file a Rule 42 Exhibit.

6. The Commission concludes that it is reasonable to approve the financing for the project more specifically described above.

7. The Commission concludes that it is reasonable to approve Staff's recommended rates and charges with the following modification:

The "INCREMENTAL COST OF WATER PRODUCED." provision shall read as follows:

\$3.92 per thousand gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average

usage.

8. The Commission will direct the District to request a reopening of this case should there be any changes in the plans, scope and terms of the financing of the project.

ORDER

IT IS, THEREFORE, ORDERED that the Clay County Public Service District's application for a certificate of convenience and necessity to construct a waterline extension to serve Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence is granted subject to the conditions set forth below.

IT IS FURTHER ORDERED that the District shall not begin construction of the project until the District has received approval from the West Virginia Bureau for Public Health regarding the source of the water supply.

IT IS FURTHER ORDERED that financing of the project is approved as follows: a West Virginia Infrastructure Council Grant in the amount of \$1,383,000; a USDA Rural Utilities Service Grant in the amount of \$1,900,000; and a USDA Rural Utilities Service Loan in the amount of \$623,000 with a term of 40 years and an interest rate of 4.5%.

IT IS FURTHER ORDERED that the District hereby granted a waiver of the requirement to file financial information pursuant to Rule 42 of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle, 150 C.S.R. Series 2.

IT IS FURTHER ORDERED that the district is hereby authorized to use the rates and charges set forth on Attachment A.

IT IS FURTHER ORDERED that the District is directed to file the approved tariff with the Commission within thirty (30) days of the entry of this order.

IT IS FURTHER ORDERED that the District shall request a reopening of this case should there be any changes in the plans, scope and terms of financing of the project.

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

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

A True Copy, Teste:

A handwritten signature in cursive script that reads "Sandra Squire".

Sandra Squire
Executive Secretary

JMH/sek
001327ca.wpd

CLAY COUNTY PUBLIC SERVICE DISTRICT

APPLICABILITY

Applicable to entire territory served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

(A) RATES

First	3,000 gallons per month	\$11.34 per 1,000 gallons
Next	3,000 gallons per month	\$10.84 per 1,000 gallons
Next	4,000 gallons per month	\$10.37 per 1,000 gallons
Next	10,000 gallons per month	\$ 9.88 per 1,000 gallons
	All over 20,000 gallons per month	\$ 9.41 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of the meter installed, to-wit:

5/8	inch meter	\$ 3 0.12 per month
3/4	inch meter	\$ 45.17 per month
1	inch meter	\$ 75.29 per month
1 ½	inch meter	\$ 150.58 per month
2	inch meter	\$ 240.92 per month
3	inch meter	\$ 451.73 per month
4	inch meter	\$ 752.88 per month
6	inch meter	\$1,505.76 per month
8	inch meter	\$2,409.21 per month

(N) The above minimum charges are subject to an additional \$1.30 per thousand gallons used per month.

DELAYED PAYMENT PENALTY

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

CONNECTION CHARGE

\$300.00

RECONNECTION CHARGE

\$20.00

(A) Indicates Increase

(N) Indicates New

INCREMENTAL COST OF WATER PRODUCED

\$3.92 per thousand gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

RETURNED CHECK FOR INSUFFICIENT FUNDS

If a check received is returned by the bank for any reason, the bank's charge to the Clay County Public Service District shall be the District's charge to the customer for such a bad check, but such charge to the customer shall not exceed \$15.00.



**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 18th day of November, 2005.

CASE NO. 00-1327-PWD-CN (REOPENED)

CLAY COUNTY PUBLIC SERVICE DISTRICT,
a public utility, Clay, Clay County.

Application for a certificate of convenience and necessity to construct a water line extension to serve Tuckers Bottom, Fola, Upper Part of Bickmore, Indore, Lizemore and Independence.

COMMISSION ORDER

Bids came in higher than estimated, and the utility has requested approval of additional financing. The Commission shall grant the request.

FINDINGS OF FACT

1. On October 8, 2002, the Commission granted Clay County Public Service District a certificate of convenience and necessity for a \$3,906,000 water line extension project to serve 260 new customers at Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence. The Commission also approved the following financing:

WV Infrastructure & Jobs Development Council grant	\$1,383,000
USDA Rural Utilities Service grant	\$1,900,000
USDA Rural Utilities Service loan	<u>\$ 623,000</u>
	\$3,906,000

Petition to Reopen p. 1. If there were any changes in the plans, scope or financing terms, the Commission required Clay County to petition for approval of such changes.

2. On August 23, 2005, Clay County petitioned to reopen the case because bids came in some \$2,100,000 over the project budget. Clay County has revised the scope of the project to save \$653,239, and the revised project cost is now \$5,793,000. Final Joint Staff Memorandum Upon Reopening p. 1. (Sept. 20, 2005). Clay County asks that the following revised financing be approved:

WV Infrastructure & Jobs Development Council grant	\$1,383,000
USDA Rural Utilities Service grant	\$1,900,000
USDA Rural Utilities Service loan	\$ 623,000
Add'l USDA Rural Utilities Service grant	\$1,200,000
Add'l WV Infrastructure & Jobs Development Council grant	\$ 687,000
	\$5,793,000

With the additional grants, it is not necessary for Clay County to further increase its rates. Petition to reopen p. 2.

3. On September 20, 2005, Commission Staff recommended that the Commission approve the petition to reopen and grant the following relief:

- a. approve receipt of the \$687,000 Infrastructure and \$1,200,000 RUS grants;
- b. require Clay County to provide Staff with the final project bids with the final customer count;
- c. require Clay County to make every effort to include the SCADA system in the project to protect the security of the water system;
- d. require Clay County to consider installing vending type bulk water purchase systems in areas where line extensions are prohibitively expensive; and,
- e. require Clay County to review its soft costs to determine their legitimacy and the relative value of providing increased fee rewards or water to those in need.

Final Joint Staff Memorandum Upon Reopening p. 2. (Sept. 20, 2005).

4. Technical Staff advised that the project had been delayed because easement records were lost in a fire, part of the system was redesigned to accommodate a low pressure condition and the proper number of user agreements had to be acquired. Final Memorandum p. 1, attached to Final Joint Staff Memorandum Upon Reopening (Sept. 20, 2005). Technical Staff also advised that the project, with the deductive alternatives, may not meet the RUS threshold of 80% of proposed customers. Id. p. 3. Consequently, Clay County should submit, after the final bid, the total number of customers to be served, after a determination is made of what areas to be eliminated. Further, Staff noted that the project

was proposed with a SCADA system to monitor all of its assets. "In Staff's view, the need for this system is critical given the state of the current water supply in the County," Technical Staff wrote. "The SCADA system will allow a quick notification and response to a water system emergency." Id. Staff noted the project was now about 90% grant funded, which is extremely rare in the current fiscal environment. Further, "The project is badly needed to serve areas of the county which have waited for water service for many years. Staff is aware of many residents hauling water and collecting rainwater to meet the domestic needs." Id.

CONCLUSIONS OF LAW

1. This case should be reopened to consider Clay County's request.
2. The Commission should approve the project's revised scope.
3. The Commission should approve the revised financing, as requested.
4. Under these circumstances, it is reasonable to require Clay County to:
 - a. provide Staff with the final project bids with the final customer count;
 - b. make every effort to include the SCADA system in the project to protect the security of the water system;
 - c. consider installing vending type bulk water purchase systems in areas where line extensions are prohibitively expensive; and,
 - d. review its soft costs to determine their legitimacy and the relative value of providing increased fee rewards or water to those in need.
5. It is reasonable to require that if there is any change in the plans, scope or cost where such change in cost affects the rates established for the project, the District must notify this Commission and request a reopening of the certificate case for adjustments and approval.

ORDER

IT IS THEREFORE ORDERED that this case is reopened.

IT IS FURTHER ORDERED that the following revised financing is approved:

WV Infrastructure & Jobs Development Council grant	\$1,383,000
USDA Rural Utilities Service grant	\$1,900,000
USDA Rural Utilities Service loan	\$ 623,000
Add'l USDA Rural Utilities Service grant	\$1,200,000
Add'l WV Infrastructure & Jobs Development Council grant	\$ 687,000
	\$5,793,000

IT IS FURTHER ORDERED that the revised scope of the project is approved.

IT IS FURTHER ORDERED that the District shall request a reopening of this case if there is a change in the plans and/or scope of the project or if there is a change in the cost of the project that effects the rates established for the project.

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

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

A True Copy, Teste:



Sandra Squire
Executive Secretary

CLW/sek
001327eb.wpd

UNITED STATES
DEPARTMENT OF
AGRICULTURE

RURAL
DEVELOPMENT

Bond Counsel
Federal Building, Room 320
75 High Street
Morgantown, WV 26505-7500
TELEPHONE: (304) 291-4796
FAX: (304) 291-4032
TTY/TDD: (304) 284-5941

March 17, 1997

William G. Dunn, Chairman
Clay County Public Service District
P.O. Box 130
Clay, WV 25043

Dear Mr. Dunn:

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

The Rural Utilities Service Water and Waste Disposal Loan and Grant Program is administered by USDA - Rural Development, formerly known as the Farmers Home Administration.

This letter is not to be considered as loan and grant approval or as representation to the availability of funds. The docket may be completed on the basis of an RUS loan not to exceed \$623,000, an RUS grant not to exceed \$1,900,000 and other funding in the amount of \$1,383,000, for a total project cost of \$3,906,000. The other funding is planned in the form of a Small Cities Block grant of \$750,000 and an Appalachian Regional Commission grant of \$633,000.

If the loan is made, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to RUS as soon as practical. In order to avoid possible delays in loan closing, such a request should ordinarily be submitted at least 30 calendar days before loan closing.

8A
USDA - Rural Development is an Equal Opportunity Lender. Complaints of discrimination should be sent to: Secretary of Agriculture, Washington, D.C. 20250

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

- Attachment No. 1 - Final Project Planning Factors
(All Copies)
- Attachment No. 2 - Clay County PSD Loan and Grant Docket
Table of Contents (All Copies)
- Attachment No. 3 - FmHA Instruction 1942-A, Section 1942.17
(Applicant Copy)
- Attachment No. 4 - FmHA Instruction 1942-A, Section 1942.18
(Engineer Copy)
- Attachment No. 5 - FmHA Instruction 1942-A, Section 1942.19
(Attorney and Bond Counsel Copies)
- Attachment No. 6 - FmHA Supplemental General Conditions
(Engineer Copy)
- Attachment No. 7 - Standards for Audit of Governmental
Organizations, Programs, Activities and Functions
(Accountant's Copy)
- Attachment No. 8 - U.S. Department of Agriculture Farmers
Home Administration Audit Program, December 1989
(Accountant's Copy)
- Attachment No. 9 - Water Users Agreement (Applicant and
Attorney Copies)
- Attachment No. 10 - Water Purchase Contract (Form FmHA 442-30)
(Attorney Copy)
- Attachment No. 11 - Declination Statement (Applicant and
Attorney Copies)
- Attachment No. 12 - Sample Credit Agreement (Applicant and
Attorney Copies)
- Attachment No. 13 - Labor Standards Provisions
(Engineer's Copy)
- Attachment No. 14 - Various other FmHA Forms as identified
on Attachment No. 2

Your documents concerning the creation of your authority are administratively acceptable; however, they will be further reviewed by our Office of the General Counsel at the time your file is forwarded for closing instructions. Any changes required by our Office of the General Counsel will be included in the closing instructions.

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.5% interest rate and a monthly amortization factor of 0.00459, which provides for a monthly payment of \$2,860. You have the option

of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account in an amount equal to at least 1/10th of your monthly debt service payment.

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

2. Security - The loan must be secured by a statutory lien on parity with the PSD's existing debt, a pledge of the system's revenues and other agreements between you and the lender (RUS) as set forth in the bond resolution which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in Form FmHA 1942-31 and Form FmHA 1942-47 which are mentioned later.
3. Users - This conditional commitment is based upon your providing evidence that you will have at least 670 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of signed users agreements and a certification from you that identifies and attests to the number of users that are actually connected to and using the PSD's existing water system, which is to be extended by the new system, at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Water Users Agreement will be used for potential users in the proposed extension area (260 users). Each user signing an agreement must make a users contribution of \$100.00. Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a service declination statement. Guide 3, FmHA Instruction 1942-A, "Service Declination Statement," a copy of which is enclosed, must be used. If a potential user refuses to sign either a users agreement or a declination statement, the individual making the contact for the PSD should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service.

Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the water service of the existing system (paying monthly bills), (2) signed users agreements, (3) signed service declination statements, (4) records evidencing users' contributions having been paid, (5) a map locating each potential user's property in the new service area and identifying it by number, (6) a list of all signed bona fide users numbered with corresponding numbers so as to be a cross-reference with the map required by (5) above and, (7) a list of all declination statements numbered with corresponding numbers so as to be a cross-reference with the map required by (5) above.

4. Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Section 1942.19 of FmHA Instruction 1942-A. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Professional Services - You must obtain the services of an attorney and an engineer. We acknowledge receipt of Form FmHA 1942-19, "Agreement for Engineering Services" and Guide 14, "Legal Services Agreement." Both agreements are now under review by our staff. Attachment No. 1 includes the cost of these services for planning purposes.
6. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
 - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
 - b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form FmHA 1927-9, "Preliminary Title Opinion," may be used. Also, in the case of existing systems or where the PSD has already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.

- c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
 - d. A copy of the right-of-way easements for any rights-of-way needed on private lands. Form FmHA 442-20, "Right-of-Way Easement," may be used. Each easement need not be provided this office; however, each must be available for review. A copy of the easement being used must be provided.
 - e. A certification and legal opinion relative to title to rights-of-way and easements. Form FmHA 442-21, "Right-of-Way Certificate," and Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. These forms may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, new Forms, FmHA 442-21 and 442-22, must be provided which do not provide for any exceptions.
 - f. On the day of loan closing, the PSD's attorney must furnish final title opinions on all land(s) being acquired. Form FmHA 1927-10, "Final Title Opinion" may be used. In the case of existing systems or where the PSD has already acquired real property(s) (land or facilities), the PSD's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
7. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
 - Railroads
 - State Department of Health
 - Department of Environmental Protection (formerly DNR)
 - Public Land Corporation
8. Public Service Commission Approvals - You must obtain the following from the Public Service Commission of West Virginia:
- a. A Certificate of Convenience and Necessity.
 - b. Approval of user charges that are acceptable to you and the Rural Utilities Service.

- c. Approval of financing for the project's proposed financing arrangements.

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

9. Accounting - You must obtain the services of a qualified accountant. That accountant must agree (by letter) to develop and provide the following:
 - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42).
 - b. Prior to advertisement for bids, your accountant must state in writing that he will establish your accounts and records in accordance with the requirements of the resolution and the requirements of the Public Service Commission within 20 days from the notice to do such.
 - c. Prior to the start of construction, the accountant must certify that the accounts and records as required in (b) above have been established and are operational.

A representative of my office will review your accounts and records prior to authorizing the issuance of award(s) to the contractor(s). FmHA regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements for your PSD. The attached booklet, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," (Attachment No. 7) and "U. S. Department of Agriculture Farmers Home Administration Audit Program," (December 1989) (Attachment No. 8) outlines audit requirements. You are reminded that certain provisions of Office and Management and Budget Circular A-128 are applicable to any public body that received \$100,000 or more in federal funds in any one year. You must enter into an agreement annually with an accountant (or the State Tax Commission) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia.

Audit Reports must be prepared to comply with the requirements of OMB Circular A-128 or A-133, as applicable.

10. Insurance and Bonding Requirements:

- a. Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
- (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000-\$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
 - (2) Workers' Compensation - In accordance with appropriate State laws.
 - (3) Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to RUS will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s). Form FmHA 440-24, "Position Fidelity Bond," may be used.
 - (4) National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
 - (a) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
 - (b) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.
 - (5) Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does

not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

11. You are, have been or may be approved to become, a recipient of Federal financial assistance from the United States Department of Agriculture. In the case of Paralyzed Veterans of America, et al, Plaintiff, V. William French Smith, et al, Defendants, United States District Court, Central District of California, No. 79-1979 WPG, the Honorable William P. Gray ordered the United States Department of Agriculture to notify you that as a recipient of such assistance you are required to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794), even though the United States Department of Agriculture has not yet issued final regulations implementing Section 504 of the Rehabilitation Act.

Section 504 of the Rehabilitation Act is designed to assure that those who receive Federal financial assistance will not discriminate against handicapped persons. It provides in relevant part as follows:

"No otherwise qualified handicapped individual in the United States. . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Effective June 3, 1977, the Department of Health and Human Services issued final regulations implementing Section 504 as it applies to recipients of Federal financial assistance from that agency (45 C.F.R. Part 84). You may look to the HHS regulation for guidance as to your obligation under Section 504 of the Rehabilitation Act.

12. Contract Documents, Final Plans and Specifications:
 - a. The contract documents should consist of the following:
 - (1) FmHA Instruction 1942-A, Guide 19, "Agreement," and Attachments 1-9 (Attachment No. 4) or other agreement approved by RUS.
 - (2) FmHA Supplemental General Conditions (Guide 18, 4-6-92 Revised WV). One copy of this item is attached hereto (Attachment No. 6). Additional copies must be reproduced by the engineer.

- (3) Labor Standards Provisions - Title 29, Subtitle A, Part 5, Section 5.5, Contract Provisions and Related Matters. One copy of this item is attached hereto (Attachment No. 13). Additional copies must be reproduced by the engineer.
 - b. The Contract documents must provide, as a minimum, the following insurance:
 - (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000-\$200,000. (This coverage must include indemnification of the PSD and its engineer.) FmHA Guide 18 suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
 - (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
 - (3) Workers' Compensation - In accordance with applicable State laws.
 - c. The contract documents and final plans and specifications must be submitted to RUS for approval.
 - d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.
13. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. The enclosed Sample Credit Agreement (Attachment No. 12) is an acceptable agreement and may be used.
14. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover RUS's proportionate share of any disbursements required of your PSD, over 30 day periods. Any funds not disbursed immediately upon receipt must be deposited in an interest bearing account in accordance with OMB Circular A-133. Interest earned on these funds must be remitted promptly, at least quarterly, to the Rural Utilities Service. The PSD must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

15. Water Purchase Contract - You propose to purchase treated water from the Town of Clay, therefore, you must enter into a Water Purchase Contract. Form FmHA 442-30 must be used unless you receive an exception from RUS.
16. Other Grants - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants. This evidence should include a copy of the grant award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the "other" grant funds are available for expenditure. This evidence should consist of at least a letter from the grantor stating the funds are available for expenditure.
17. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
 - Form FmHA 442-7 - "Operating Budget"
 - Form FmHA 1940-1 - "Request for Obligation of Funds"
 - Form FmHA 1942-31 - "Association Water or Sewer System Grant Agreement"
 - Form FmHA 1942-47 - "Loan Resolution -- (Public Bodies)"
 - Form FmHA 400-1 - "Equal Opportunity Agreement"
 - Form FmHA 400-4 - "Assurance Agreement"
 - Form AD 1047 - "Certification Regarding Debarment - Primary"
 - Form AD 1049 - "Certification Regarding Drug-Free Workplace"
 - Form FmHA 1910-11 - "Applicant Certification, Federal Collection Policies"
 - FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
 - Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)
18. The enclosed Loan Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.
19. Upon receipt of the loan and grant docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been

satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

Attached is a copy of Form FmHA 1942-31, "Association Water and Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.

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

In accordance with the intent of Congress as expressed in the FY 1997 Appropriations Act, recipients of Water and Waste assistance provided by the Rural Utilities Service are encouraged, in expending the assistance, to purchase only American-made equipment and products.

Please complete and return the enclosed Form FmHA 1942-46, "Letter of Intent to Meet Conditions," if you desire further consideration be given your application.

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

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

Sincerely yours,



BOBBY LEWIS
State Director

Enclosures

cc: (See Page 12)

cc: Administrator, RUS
ATTN: Water and Waste
Disposal Division
Washington, DC

Rural Development Specialist
Beckley, WV

(Accountant)

Gordon Billheimer
Attorney at Law
Montgomery WV

(Bond Counsel)

Chapman Technical Group
St. Albans, WV

Project Planning Factors

The Project Planning Factors are found on Page 2 of this Attachment.

Rates

Minimum Charge

Available for general domestic, commercial and industrial service.

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

First	3,000 gals.	@	\$7.03	per M gals.
Next	3,000 gals.	@	\$6.68	per M gals.
Next	4,000 gals.	@	\$6.35	per M gals.
Next	10,000 gals.	@	\$6.01	per M gals.
Over	20,000 gals.	@	\$5.68	per M gals.
5/8" x 3/4"	meter	-	\$ 21.09	per month
3/4"	meter	-	\$ 31.65	per month
1"	meter	-	\$ 52.75	per month
1 1/2"	meter	-	\$ 105.45	per month
2"	meter	-	\$ 168.70	per month
3"	meter	-	\$ 316.35	per month
4"	meter	-	\$ 527.25	per month
6"	meter	-	\$1,054.50	per month
8"	meter	-	\$1,687.20	per month

(Minimum Monthly Bill \$21.09 for 3,000 gallons)

Clay County Public Service District
Project Planning Factors

The following estimates are to be used as a basis for project planning and must not be changed without prior approval of RUS:

<u>Project Costs</u>	<u>SCB Grant</u>	ARC <u>Grant</u>	<u>RUS Grant</u>	<u>RUS Loan</u>	<u>Total</u>
Construction	\$500,000	\$302,000	\$1,800,000	\$437,000	\$3,039,000
Construction Contg.		304,000			304,000
Land & Rights				40,000	40,000
Legal & Admin. Fees	23,000			16,000	39,000
Engineering Fees	227,000		100,000	60,000	387,000
Basic \$224,000					
Insp. 128,000					
Spec. 35,000					
Bond Counsel				10,000	10,000
Interest				60,000	60,000
Project Contg.		27,000			27,000
	-----	-----	-----	-----	-----
TOTALS	\$750,000	\$633,000	\$1,900,000	\$623,000	\$3,906,000

Delayed Payment Penalty

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

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

Connection Charge

Prior to Construction - \$100.00

After the start of construction, there shall be a charge of \$300.00 for connection to the system.

Reconnection Charge

\$20.00

Use and Income Analysis

385 users @	min. gallons @	\$ 21.09 per user =	\$8,120 monthly
208 users @	4,144 gallons @	\$ 28.73 per user =	\$5,976 monthly
62 users @	7,625 gallons @	\$ 51.45 per user =	\$3,190 monthly
13 users @	14,179 gallons @	\$ 91.65 per user =	\$1,192 monthly
2 users @	71,820 gallons @	\$421.00 per user =	\$ 842 monthly

670 Total Users

\$19,320 Monthly Revenue x 12 = \$231,840 Annual Revenue

Budget

Income		\$231,840
Expenses		
O & M	\$138,200	
*Debt Service	81,419	
**Reserve	8,142	
		\$227,761
Balance and Depreciation		\$ 4,079***

Operating and Maintenance Expenses

Source of Supply	\$67,100
Pumping	\$31,300
Transmission and Distribution	\$16,000
Customer Service	\$13,000
Administration and General	\$10,800
TOTAL	\$138,200

*Existing D/S \$47,099
Proposed D/S 34,320

** Existing D/S Reserve \$4,710
Proposed D/S Reserve 3,432

Total - \$81,419

Total - \$8,142

*** A WDA debt service ratio of 115% is required for ALL debt. Ten percent (10%) is reflected in the required debt service reserve. The remaining 5% is reflected herein.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
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Loan and Grant
Water and Sewer Systems

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
SF 424	Application for Federal Assistance	0 & 2	1942.2 (a) (1)	App.		Have	3
	Regional Planning & Development Council Review	2	1942.2 (a) (1)	App.		Have	3
	State Clearing-house Review or IJDC Review	2	1942.2 (a) (1)	App.		Have	3
Guide 7/8	Preliminary Engr. Report	2	1942.18 (c)	Engr.		Have	6
	Bond Ordn. or Resol. on Outstanding Debts	1	1942.17 (h)	App./Att.		Have	2
	Bonds or Notes Outstanding Debts	1	1942.17 (h)	App./Att.		Have	2
	Audit for last year of operation	1	1942.17 (h)	App./Att.			1
AD 1049	Certification Regarding Drug-Free Workplace	1	1940-M 1940.606 (b) (2)	App.		Have	5
	Minutes Adopting Drug-Free Workplace Program	1	LOC	App.			5
	Organizational Documents	1	1942.17 (b) (4)	App./Att.		Have	5
1940-20	Request for Env. Info.	2	1942.17 (j) (7)	App./Eng.		Have	3

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	Env. Assessment for Class II Actions (Exhibit H, 1940-G)	2	1942.17 (j) (7)	RUS		Have	3
	Statement from State Historical Preservation Office	2	1940.304 (d)	App.		Have	3
	Comments from WV Bureau of Commerce Div. of Natural Resources (DNR)	2	1940.304 (d)	App.		Have	3
	Comments from U.S. Fish & Wildlife Service (Endangered Species)	2	1940.304 (d)	App.		Have	3
	Comments from U.S. Forest Service (Wild & Scenic Rivers)	2	1940.304 (d)	App.		Have	3
	Brief Stmt. telling how facility will be operated	1	1942.17 (b) (3)	App.			5
	Copy of Existing Rate Tariff	2	1942.17 (h)	App.		Have	8
	Bill analysis for existing system(s)	2	1942.17 (h) (2)	App./ Engr./ Acct.		Have	8
	Projected Bill analysis for new users	2	1942.17 (h) (2)	App./ Engr./ Acct.		Have	8
	Adjustments to historic income & cost - explain changes	2	1942.17 (h) (i)	App./ Engr./ Acct.		Have	8

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Statement reporting the <u>total</u> number of <u>potential</u> users		1942.17 (h) (2) (i) (A)	App./ Engr./ Acct.		Have	8
1942-19	Agreement for Engineering Services	3	1942.17 (1) (1)	App./Engr.		Have	6
	Legal Services Agreement		Guide 14 1942.17 (1) (1)	App./Engr.		Have	5
	Documentation on Service Area	1	1942.5 (a)	RUS			3
	Written Certification from Applicant that "Other" credit is <u>NOT</u> available	2	1942.17 (b) (3)	App.		Have	3
	RUS determin. on the availability of other credit	2	1942.17 (b) (3)	RUS			3
	Documentation from lender(s) regarding the availability of other credit	2	1942.17 (b) (3)	RUS		Have	3
	Documentation on Historical and Archaeological Assessments	2	1901-F 1901.255 (2)	RUS			3
	Copy of Certification of Publication and related Environmental Information	2	1940-G 1940.331 (c)	App.		Have	3
	Project Planning Factors	4	S/Office	RUS			3

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
1942-51	Grant Determination	3	1942-H 1942.364	RUS		Have	2
	Finding of No Significant Impact (FONSI)	2	1940-G 1940.314	RUS		Have	3
	Evidence of Public Meeting Minutes	2	1942.17 (j) (9)	App.		Have	3
AD 622	Notice of Preapplication Review	0 & 3	1942.17 (m) (4)	RUS		Have	3
SF 424	Application for Federal Assistance	0 & 1	1942.17 (m) (5)	App.		Have	3
FmHA Inst. 1940-Q Exh. A-1	Certification for Contracts, Grants and Loans	0 & 1	1940-Q	App.		Have	5
SF LLL	Disclosure of Lobbying Activities	0 & 1	1940-Q Exh. A	App.			5
1942-45	Project Summary	0 & 2	1942.5 (a) (1)	RUS		Have	1
442-3	Balance Sheet	0 & 1	1942.17 (h)	App.			1
442-7	Operating Budget	0 & 2	1942.17 (h)	App.			3
1942-14	Project Fund Analysis	0 & 4	1942.5 (c)	RUS		Have	2
Guide 26	CP Program Project Selection Criteria	2	1942-A	RUS		Have	2
	Letter of Conditions	7	1942.5 (c)	RUS		Have	3
1942-46	Letter of Intent to Meet Conditions	2	1942.5 (c)	App.			3

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
1940-1	Request for Obligation of Funds	4	1942.5 (c) (3)	RUS/App.			2
	Written Request from Applicant for the Lower Interest Rate	2	1942.17 (f) (1)	RUS/App.			2
1942-31	Association Water or Sewer System Grant Agreement	2	1942-H 1942.367 (f)	RUS/App.			2
	Evidence of "Other" Funds	1	1942.17 (n) (6)	App.			2
	Water Users Agreement (Copy)	1	1942.17 (h) (2) (B)	App.			5
AD 1047	Certification Regarding Debarment (Primary)	1	1940-M 1940.606 (b) (1)	App.		Have	5
AD 1048	Certification Regarding Debarment (Contractor)	1 ea	1940-M 1940.606 (b) (1)	All Appropriate Vendors			5
1910-11	Applicant Certification, Federal Collection Policies	1	1942.5 (a) (1) (i)	App.		Have	3
	Evidence of Users:						
	1. Map of Users with each identified by number	1	LOC	App.			Sep. File
	2. List of Signed Users Numbered to Map	1	LOC	App.			5

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	3. List of Declination Statement Numbered to Map	1	LOC	App.			5
	4. Evidence of Tap Fees Being Paid	1	LOC	App.			5
	5. Having Users Agreements and Declination Statements Available		LOC	App.			
	Positive Program to Encourage Connections When Completed	1	1942.17 (h) (2) (iii)	App.			5
	Verification of Users	1	1942.6 (b)	RUS			3
	Preliminary Bond Transcr. Documents w/no Defeasance Provisions	2	1942.17 (j) (6) (ii)	B. Counsel			2
	Right-of-Way Map	1	Form FmHA 1942-19	Engr.			Sep. File
	Deeds and/or Options		1942.17 (j) (4) (i)	App./Att.			
1927-9	Preliminary Title Opinion	1	1942.17 (j) (4) (i)	App./Att.			5
1927-10	Final Title Opinion	1	1942.17 (j) (4) (i)	App./Att.		Have	5
	Narrative Opinion from Attorney	1	LOC	Att.			5
442-20	Right-of-Way Easement	1	1942.17 (j) (4) (i)	App.			5
442-21	Right-of-Way Certificate	1	1942.17 (j) (4) (i)	App.			5

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
442-22	Opinion of Counsel Relative to R/Way		1942.17 (j) (4) (i)	Att.			5
1942-47	Loan Resolution	1	1942.17 (n) (2)	App.			5
	Copy of PSC Rule 42 Exh.	1	State	Att./Acct.			3
	Agreement with Accountant	1	1942.17 (l) (1)	App./Acct.			6
	Interim Financing Agreement	1	1942.17 (n) (3)	App./Att.			1
442-30	Water Purchase Contract	1	1942.18 (f)	App./Att.			5
400-1	Equal Opportunity Agreement	1	1942.17 (n) (2) (x)	App.			6
400-4	Assurance Agreement	1	1942.17 (n) (2) (x)	App.			3
	Bond Transcript Documents w/no Defeasance Provisions	3	1942.17 (j) (6) (ii)	B. Counsel			Sep. File
	OGC Closing Instructions	1	1942.17 (n) (4)	RUS			5
	S/O Closing Instructions	1	1942.17 (n) (4)	RUS			5
	DOH Permit	1	1942.17 (k)	App.			6
	Railroad Permits	1	1942.17 (k)	App.			6
	Public Land Corp. Permit	1	1942.17 (k)	App.			6
	Corps of Engrs. Permit	1	1942.17 (j)(4)(i)	App.			6

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Flood Insurance Policy	1	1942.17 (j) (3) (iii)	App.			7
440-24	Fidelity Bond	1	1942.17 (j) (3) (ii)	App.			7
	OGC Final Opinion	1	1942.17 (o) (4)	RUS			5

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§1942.19 Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants.

(a) General. This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) Policies related to use of bond counsel. Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b)(1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) Issues of \$250,000 or less. At the option of the applicant for issues of \$250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents when the applicant, FmHA, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) Issues of \$50,000 or less. At the option of the applicant and with the prior approval of the FmHA State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed \$50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by FmHA to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.

(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with FmHA requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U. S. Department of Agriculture for the guidance of FmHA.

(3) For loans of less than \$500,000. The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b)(2)(iii) through (vi) of this section.

(c) Bond transcript documents. Any questions with respect to FmHA requirements should be discussed with the FmHA representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA:

- (1) Copies of all organizational documents.
- (2) Copies of general incumbency certificate.
- (3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.
- (4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.
- (5) Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

- (6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.
- (7) Specimen bond, with any attached coupons.
- (8) Attorney's no-litigation certificate.
- (9) Certified copies of resolutions or other documents pertaining to the bond award.
- (10) Any additional or supporting documents required by bond counsel.
- (11) For loans involving multiple advances of FmHA loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.
- (12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926 (a)(1) or 1929a (h)], and providing that if the bonds evidencing the indebtedness in question are acquired by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) Interim financing from commercial sources during construction period for loans of \$50,000 or more. In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds.

(e) Permanent instruments for FmHA loans to repay interim commercial financing. FmHA loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) First preference - Form FmHA 440-22, "Promissory Note (Association or Organization)". If legally permissible use Form FmHA 440-22 for insured loans.

(2) Second preference - single instruments with amortized installments. If Form FmHA 440-22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each FmHA advance on the reverse thereof or on an attachment to the instrument. Form FmHA 440-22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that "interest only" is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment dates thereafter.

(i) Annual payments - Subtract the due date of the last annual interest only installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing:	7-5-1976
Amount of Loan:	\$100,000.00
Interest Rate:	5%
Amortization Period:	40 years
Interest Only Installments:	7-5-1977 and 7-5-1978
First Regular Installment:	7-5-1979
Final Installment:	7-5-2016

Computation:	2016-1978=
	38 annual payments
\$100,000.00 x .05929 =	\$5,929.00 annual payment due

(ii) Semiannual payments - Multiply by two the number of years between the due date of the last annual interest only installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA Amortization Tables and round to the next higher dollar.

Example of Computation of Semiannual Payment:

Date of Loan Closing:	7-5-1976
Amount of Loan:	\$100,000.00
Interest Rate:	5%
Amortization Period:	40 years
Interest Only Installments:	7-5-1977 and 7-5-1978
First Regular Installment:	7-5-1979
Final Installment:	7-5-2016
Computation:	2016 - 1978 = 38 x 2 = 76 semiannual periods
	\$100,000.00 x .02952 = \$2,952.00 semiannual payment due

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

Example of Computation of Monthly Payment:

Date of Loan Closing:	7-5-1976
Amount of the Loan:	\$100,000.00
Interest Rate:	5%
Amortization Period:	40 years
Interest Only Installments:	7-5-1977 and 7-5-1978

First Regular Installment:	7-5-1979
Final Installment:	7-5-2016
Computation:	2016 - 1978 =
	38 x 12 = 456 monthly payments
\$100,000.00 x .00491 =	\$491.00 monthly payment due

(3) Third preference - single instrument with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e)(2) of this section, "Second preference" applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

- (1) billed delinquent interest,
- (2) past due interest installments,
- (3) past due principal installments,
- (4) interest installment due, and
- (5) principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e)(3) of this section.

(f) Multiple advances of FmHA funds using permanent instruments. Where interim financing from commercial sources is not available, FmHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

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

- (1) The date from which each advance will bear interest.
- (2) The interest rate.
- (3) A payment schedule providing for interest on outstanding principal at least annually.
- (4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) Minimum bond specifications. The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

- (1) Type and denominations. Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1000). Single bonds may provide for repayment of

principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) To compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

(2) Bond registration. Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name of "United States of America, Farmers Home Administration," and will remain so registered at all time while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the appropriate FmHA State Office. (Revised 3-1-88, SPECIAL PN.)

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

(4) Date of bond. Bonds will preferably be dated as of the day of delivery, however, may be dated another date at the option of the borrower and subject to approval by FmHA. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

§1942.19 (h) (Con.)

(5) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided. (Revised 06-26-91, PN 168.)

(6) Place of payment. Payments on bonds purchased by FmHA should be submitted to the FmHA District Office by the borrower. The District Office will then remit the payments to the Finance Office or deposit them in a Treasury General Account in accordance with Subpart B of Part 1951 of this chapter.

(7) Redemptions. Bonds should contain customary redemption provisions; subject, however, to unlimited right of redemption without premium of any bonds held by FmHA except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in paragraph (e) of this section.

(8) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(9) Scheduling of FmHA payments when joint financing is involved. In all cases in which FmHA is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA payments of principal and interest should approximate amortized installments.

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

FmHA Instruction 1942-A
§1942.19 (h)(10) (Con.)

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

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

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeated, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed. (Revised 05-03-89, SPECIAL PN.)

(iv) Provisions that amend covenants contained in Forms FmHA 1942-47, "Loan Resolution (Public Bodies)," or FmHA 1942-9, "Loan Resolution Security Agreement." (Revised 06-26-91, PN 163.)

(11) Multiple Loan Instruments. The following will be adhered to when preparing debt instruments:

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

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form FmHA 1940-1, "Request for Obligation of Funds," of the action.

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



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

July 20, 2005

COPY

~~N. Keith King, Chairman
Clay County Public Service District
P.O. Box 130
Clay, WV 25043~~

RE: Amendment No. 1 to
Letter of Conditions

Dear Mr. King:

This letter, with Attachment No. 1 amends the letter of conditions dated March 17, 1997 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant(s) will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$623,000, an initial RUS grant in the amount of \$1,900,000, a subsequent RUS grant in the amount of \$1,200,000, and other funding in the amount of \$2,070,000, for a total project cost of \$5,793,000. The other funding is planned in the form of grants from the West Virginia Infrastructure and Jobs Development Council.

Subject to the requirements noted herein, all of the conditions of the March 17, 1997 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

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

Enclosed are the following:

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

75 High Street • Suite 320 • Morgantown, WV 26505-7500
Phone: (304) 284-4860 • Fax: (304) 284-4893 • TDD: (304) 284-4865 • Web: <http://www.rurdev.usda.gov/wv>

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88

The conditions referred to above are as follows:

1. Public Service Commission Approval - You must obtain PSC approval of the project's proposed financing and user rates as may result from this amendment to the letter of conditions.
2. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

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

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

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

Sincerely,


ROBERT M. STEFTOE III
State Director

Enclosures

cc: RUS Rural Development Specialist
Beckley, WV

H. Wyatt Hannah, III, Attorney at Law
P.O. Box 8070
South Charleston, WV 25303

✓ Francesca Tan, Attorney at Law
Jackson Kelly, PLLC
P.O. Box 619
Morgantown, WV 26507

Chapman Technical Group
ATTN: Greg Belcher, P.E.
Vice President, Engineering
200 Sixth Avenue
St. Albans, WV 25177

James W. Lane, Jr.
Attorney at Law
P.O. Box 11806
Charleston, WV 25339

Terry Martin, Project Coordinator
Region III Planning and
Development Council
315 D Street
South Charleston, WV 25303

Project Construction Budget

<u>PROJECT COST</u>	<u>WVIJDC GRANT</u>	<u>WVIJDC GRANT</u>	<u>RUS SUB. GRANT</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 687,000	\$ 1,237,500	\$ 1,179,500	\$ 1,297,330	\$ 189,100	\$ 4,590,430
CONST. CONTINGENCY		\$ 115,000		\$ 114,500		\$ 229,500
LAND & RIGHTS		\$ 5,000			\$ 25,000	\$ 30,000
LEGAL FEES					\$ 25,000	\$ 25,000
LEGAL FEES					\$ 10,000	\$ 10,000
BOND COUNSEL					\$ 20,000	\$ 20,000
REGISTRAR FEES		\$ 500				\$ 500
ACCOUNTING					\$ 8,000	\$ 8,000
POWER TO SITES				\$ 15,000		\$ 15,000
PERMITS					\$ 3,000	\$ 3,000
ENGINEERING FEES				\$ 370,700	\$ 303,200	\$ 673,900
Basic - \$302,400						
Insp. - \$315,500						
Special - \$56,000						
INTEREST					\$ 39,700	\$ 39,700
ADMINISTRATION		\$ 25,000				\$ 25,000
PROJECT CONTG.			\$ 20,500	\$ 102,470		\$ 122,970
TOTAL	\$ 687,000	\$ 1,383,000	\$ 1,200,000	\$ 1,900,000	\$ 623,000	\$ 5,793,000

LOAN RESOLUTION
(Public Bodies)

A RESOLUTION OF THE Board of Directors

OF THE Clay County Public Service District

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS Project 01 - Water

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO

WHEREAS, it is necessary for the Clay County Public Service District
(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

SIX HUNDRED TWENTY-THREE THOUSAND AND XX / 100 DOLLARS (\$623,000.00)

pursuant to the provisions of Chapter 16, Article 13A ; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section, 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

9A

11. To acquire and maintain ~~such~~ insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$3,100,000

under the terms offered by the Government; that Chairman

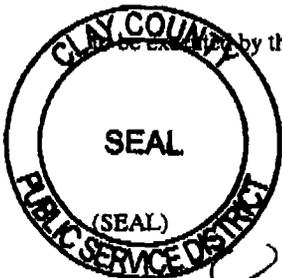
and Secretary of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

Yeas 2 Nays 0 Absent 1

IN WITNESS WHEREOF, the Board of Directors of the

Clay County Public Service District has duly adopted this resolution and caused it



by the officers below in duplicate on this 15th day of December, 2005

Clay County Public Service District

By N. Keith King

Title Chairman

Attest: Simpson Neal

Title Secretary

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as Secretary of the Clay County Public Service District

hereby certify that the Board of Directors of such Association is composed of

3 members, of whom 2 constituting a quorum, were present at a meeting thereof duly called and

held on the 15th day of December, 2005 ; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of December 19, 2005, the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this 19th day of December, 2005



Title Secretary



United States Department of Agriculture
Rural Development
Beckley Area Office

November 30, 2005

Keith King, Chairman
Clay County PSD
P. O. Box 130
Clay, WV 25043

Dear Mr. King:

The pre-closing date for the PSD's water project has been established as December 15, 2005. The pre-closing will begin at 10:00 a.m. at the PSD office followed by the pre-construction conference at 11:00 a.m.

Reference is made to our Letter of Conditions dated March 17, 1997. All of the requirements of that letter must be met.

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

1. The PSD's attorney must furnish Form RD 442-22, "Opinion of Counsel Relative to Rights of Way," showing no exceptions. This form should be dated December 19, 2005.
2. The PSD's attorney must furnish Form RD 1927-10, "Final Title Opinion," on all land(s) being acquired. In addition, the attorney must provide a separate Final Title Opinion(s) covering all existing property owned by the PSD. The opinion(s) should be dated December 19, 2005.
3. The PSD's attorney must furnish an updated narrative opinion addressing all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. The narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled. The opinion should be dated December 19, 2005.

481 Ragland Rd. • Beckley, WV 25801
Phone: (304) 253-8597 • Toll Free: (800) 295-8228 • Fax: (304) 252-5809 • TDD: (304) 284-4636 • Web: <http://www.rurdev.usda.gov/wv>

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9B

4. The permit from the West Virginia Department of Highways must be on hand at the closing. The PSD should proceed to obtain necessary bond and forward same to the WVDOH requesting the permit be issued.
5. The PSD's engineer must provide a resume of the proposed inspector(s).
6. The PSD must provide a letter accepting the proposed inspector(s).
7. A certificate from the PSD's accountant that the accounts and records required by the bond resolution and the PSC have been established and are operational. The chart of accounts and record keeping books must be available for review at loan closing.
8. The PSD must provide evidence that it has acquired insurance and bond coverage in accordance with item 10 of the Letter of Conditions.
9. The PSD must furnish evidence that it provides State Workman's Compensation Insurance.

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

Sincerely,

TERESA A. MILLER
Rural Development Specialist

Enclosures

cc: State Director, Rural Development, Morgantown, WV
James W. Lane, Jr., Attorney at Law, Charleston, WV
Jackson & Kelly, Bond Counsel, Morgantown, WV
H. Wyatt Hanna, III, Attorney at Law, South Charleston, WV
Chapman Technical Group, St Albans, WV
Bassett & Lowe, CPA, Milton, WV 25541



United States Department of Agriculture
Rural Development
West Virginia State Office

DATE: December 2, 2005

SUBJECT: Clay County Public Service District
Water System Improvements Project
Construction Contract Concurrence

TO: Stephen Wetherbee, Area Director
Attention: Teresa Miller, RDS
Beckley, WV

We have reviewed the bidding documents for the subject project and hereby concur with Clay County Public Service District in the award of the following contracts:

Contract 1	Diversified Enterprise, Inc.	\$1,400,770.00
Contract 2	Diversified Enterprise, Inc.	\$1,277,405.00
Contract 3	Diversified Enterprise, Inc.	\$1,196,950.00
Contract 4	Mid Atlantic Storage Systems, Inc.	\$ 541,820.00
Contract 5	C.I. Thornburg Co., Inc.	\$ 173,485.00

Prior to the preconstruction conference, a resume of the resident project representative's qualifications will need to be submitted to the owner and to USDA - Rural Development for acceptance in writing by December 12, 2005.

A preconstruction conference has been arranged for 11:00 am on December 15, 2005 at the Clay County PSD office in Clay, West Virginia. By copy of this memorandum to Chapman Technical Group we are requesting that they arrange for the contractor, the job superintendent, and themselves to be present at the conference. At that time, the engineer must have available five (5) sets of contract documents for the contract to be distributed as follows: **USDA RD - two (2) small sets**; Borrower - one (1) set; Contractor - one (1) set; and the Project Engineer - one (1) set. Additional copies must be provided as required by other interested parties.

The documents should include the following:

1. A reproduced copy of the contractor's bid.
2. The contract agreement, completely filled in, signed by the contractors and the PSD and dated December 17, 2005.

75 High Street • Suite 320 • Morgantown, WV 26505-7500
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**United States Department of Agriculture
Rural Development
West Virginia State Office**

3. Performance and payment bonds in the amount of 100 percent of the contract amount and dated December 17, 2005. The form of performance and payment bonds as provided in the specifications must be used as the bonds for the project. The payment bonds must be notarized so that they may be recorded at the local county courthouse. Both the performance and payment bonds must be signed by an in-state agent.
4. Certificate of Insurance (Form WC-E 026) evidencing that payment into Workers' Compensation Fund is current.
5. Certificate of Insurance evidencing contractors' general public liability and property damage coverage in the amounts listed in the specifications and containing the provisions preventing the cancellation without 15 days prior written notice to the owner. Coverage must be shown for blasting if it will be done on the project.
6. Certificate of Insurance evidencing contractual liability coverage so that the provisions of Paragraph 24 of the General Conditions will be met. The contractors may provide an owner's protective liability policy if they so choose.
7. Certificate of Insurance evidencing builder's risk insurance coverage on a 100 percent basis of the insurable portion of the project for the benefit of the owner and contractor as their interest may appear.
8. Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions."
9. RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans."

The engineer should assemble the above information and send one (1) copy to the State Office for review by December 12, 2005.

A representative from the West Virginia Department of Highways District Office, along with the representatives from the utility companies that could be involved with the subject project, should also be invited by the engineer to attend the preconstruction conference.

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

**Clay County Public Service District
Water System Improvements Project**
The revised final project budget is as follows:

Project	WVIJDC Grant	WVIJDC Grant	RUS Sub. Grant	RUS Grant	RUS Loan	Total
Construction	\$ 687,000	\$1, 237,500	\$1,179,500	\$1,297,330	\$ 189,100	\$4,590,430
Construction Contingency		\$ 115,000		\$ 114,500		\$ 229,500
Lands & Rights		\$ 5,000			\$ 25,000	\$ 30,000
Legal Fees					\$ 25,000	\$ 25,000
Legal Fees					\$ 10,000	\$ 10,000
Bond Counsel					\$ 20,000	\$ 20,000
Registrar Fees		\$ 500				\$ 500
Accounting					\$ 8,000	\$ 8,000
Power to Site				\$ 15,000		\$ 15,000
Permits					\$ 3,000	\$ 3,000
Engineering				\$ 370,700	\$ 303,200	\$ 673,900
Basic (\$302,400)						
RPR (\$315,500)						
Special (\$56,000)						
Interest					\$ 39,700	\$ 39,700
Administration		\$ 25,000				\$ 25,000
Project Contingency			\$ 20,500	\$ 102,470		\$ 122,970
Totals	\$ 687,000	\$1,383,000	\$1,200,000	\$1,900,000	\$ 623,000	\$5,793,000

75 High Street • Suite 320 • Morgantown, WV 26505-7500
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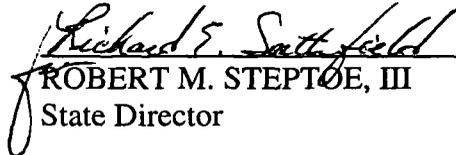
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United States Department of Agriculture
Rural Development
West Virginia State Office

For the contracts on this project, you should send a signed copy of Form RD 400-3, with applicable attachments, to the engineer so that they may forward them to the contractors.

If you should have any questions, please advise.


ROBERT M. STEPTOE, III
State Director

cc: Randy Plum, Program Director, RUS

Clay County PSD
Attention: Keith King, Chairman
P.O. Box 130
Clay, WV 25043

Chapman Technical Group
Attention: Robert G. Belcher, P.E.
200 Sixth Street
St Albans, WV 25177

H Wyatt Hanna, III, Attorney at Law
P.O. Box 8070
South Charleston, WV 25303

Francesca Tan, Esquire
Jackson and Kelly, Attorney at Law
P.O. Box 619
Morgantown, WV 26507

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*1201
Answer*

United States
Department of
Agriculture

Office of the
General
Counsel

Post Office Box 1134
Harrisburg, PA 17108-1134
Phone: (717) 221-3713
Fax: (717) 221-3443

September 16, 2004

SUBJECT: Clay County Public Service District
RUS Loan \$623,000
RUS Grant - \$1,900,000
Closing Instructions

TO: State Director, Rural Development
Morgantown, West Virginia
Attn: Jenny Phillips

2004 SEP 20 AM 8 38

We are of the opinion that this loan is legally in order for closing provided that the following Closing Instructions are fully complied with beforehand and all administrative requirements are met:

The loan should be closed in accordance with our memorandum of October 20, 1980, and the "Standard Closing Guidelines for Community Facility Loans to Public Bodies" previously furnished to you for publication as a state bulletin.

In the event that any of the Closing Instructions cannot be fully complied with or are not understood, the closing should be postponed and this office notified in detail.

JULIE ESPESETH QUIRK
ATTORNEY

JEQ/paf

**CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)**

2.4

BOND RESOLUTION

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CLAY COUNTY PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF CLAY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$623,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF CLAY COUNTY PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. 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, 1931, as amended and in effect on the date of adoption of this Resolution.

“Bond Registrar” means the Issuer, which shall so serve by the Secretary of the Issuer.

“Bonds” means, collectively, the Series 2005 A Bonds, the Prior Bonds and any Parity Bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

“Chairperson” means the Chairperson of the Governing Body of the Issuer or any temporary Acting Chairperson duly elected by the Governing Body.

“Closing Date” means the date upon which there is an exchange of the Series 2005 A Bonds for all or a portion of the proceeds of the Series 2005 A Bonds.

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

“Consulting Engineers” means Chapman Technical Group, St. Albans, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

“Costs” or “Costs of the Project” means those costs described in Section 1.03E hereof to be a part of the cost of acquisition and construction of the Project.

“Depository Bank” means the bank or banks designated as such in the Supplemental Resolution and any successors and assigns, which shall be a member of FDIC.

“Depreciation Account” means the Depreciation Account established by the Prior Resolutions and continued by Section 5.01 hereof.

“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 is now or may hereafter be constituted.

“Government” means the United States of America, United States Department of Agriculture, Rural Utilities Service, which is expected to be the original purchaser of the Series 2005 A Bonds.

“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.

“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.

“Issuer” means Clay County Public Service District, a public service district, public corporation and political subdivision of the State in Clay County, West Virginia, and includes the Governing Body.

“Letter of Conditions” means, collectively, the Letter of Conditions from the Government dated March 17, 1997, and all amendments thereto.

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

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the System as hereinafter defined and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, fees and expenses of fiscal agents, depository banks, registrars, paying agents and trustees, other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

“Outstanding,” when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond 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 Section 10.01 hereof; and (iv) for purposes of consents, notices or other action by a specified percentage of Registered Owners, any Bonds registered to the Issuer.

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

“Prior Bonds” means, collectively, the Issuer’s (i) Water Revenue Bonds, Series 1994, dated February 15, 1994, issued in the original principal amount of \$383,000; and (ii) Water Revenue Bonds, Series 1994 B, dated October 21, 1994, issued in the original principal amount of \$333,000.

“Prior Resolutions” means, collectively, the resolutions of the Issuer adopted February 3, 1994, and October 20, 1994, authorizing the Prior Bonds.

“Project” means the acquisition and construction of certain extensions, additions, betterments and improvements to the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference.

“PSC” means the Public Service Commission of West Virginia and any successor to the functions thereof.

“PSC Order” means, collectively, the final order or orders of the PSC, granting the Issuer a certificate of convenience and necessity to construct the Project and approving the financing for the Project and the rates of the System.

“Qualified Investments” means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

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

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

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

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

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

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by the Prior Resolutions and continued by Section 5.01 hereof.

"Reserve Accounts" means, collectively, the respective reserve accounts of the Series 2005 A Bonds and the Prior Bonds.

"Reserve Requirements" means, collectively, the respective reserve requirements of the Series 2005 A Bonds and the Prior Bonds.

“Resolution” means this Bond Resolution and all orders and resolutions supplemental hereto or amendatory hereof.

“Revenue Fund” means the Revenue Fund established by the Prior Resolutions and continued by Section 5.01 hereof.

“Secretary” means the Secretary of the Governing Body of the Issuer.

“Series 2005 A Bonds” means the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), of the Issuer, authorized to be issued hereby.

“Series 2005 A Bonds Construction Trust Fund” means the Series 2005 A Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2005 A Bonds Reserve Account” means the Series 2005 A Bonds Reserve Account established by Section 5.02 hereof.

“Series 2005 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2005 A Bonds in the then current or any succeeding year.

“Series 2005 A Bonds Sinking Fund” means the Series 2005 A Bonds Sinking Fund established by Section 5.03A(2) hereof.

“Sinking Funds” means, collectively, the respective sinking funds of the Series 2005 A Bonds and the Prior Bonds.

“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 authorizing the sale of the Series 2005 A Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2005 A Bonds and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by this Resolution to be set aside and held for the payment of or security for the Series 2005 A Bonds and the Prior Bonds, including the Sinking Funds, the Reserve Accounts, the Renewal and Replacement Fund and the Depreciation Account.

“System” means the complete public service properties of the Issuer for the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, improvements and extensions thereto hereafter constructed or acquired for the System from any sources whatsoever.

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

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

Section 1.02. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

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

A. The Issuer is a public service district, public corporation and political subdivision of the State in Clay County of said State. The Issuer presently owns and operates a public water system. However, the Issuer deems it necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be acquired and constructed the Project, in accordance with the plans and specifications prepared by the Consulting Engineer, which plans and specifications have been approved by the Government and the Issuer.

B. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the Government.

C. The estimated maximum cost of acquisition and construction of the Project is \$5,793,000, of which \$623,000 will be obtained from proceeds of the Series 2005 A Bonds, \$3,100,000 will be obtained from a grant from the Government and \$2,070,000 will be obtained from a grant from the West Virginia Infrastructure and Jobs Development Council.

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 Operating Expenses of

the System, the principal of and interest on the Prior Bonds and the Series 2005 A Bonds and to make payments into all funds and accounts provided for in this Resolution and the Prior Resolutions.

E. It is deemed necessary for the Issuer to issue the Series 2005 A Bonds in the aggregate principal amount of not more than \$623,000, to permanently finance a portion of the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of acquisition or construction of any public service properties and any improvements and extensions thereto, the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest on the Series 2005 A Bonds prior to and during acquisition or construction and for six months after completion of acquisition or construction of the Project; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the acquisition or construction 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.

F. The Series 2005 A Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2005 A Bonds, the Issuer will obtain (1) the certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the Prior Bonds have been met; and (2) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2005 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

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

H. It is in the best interests of the Issuer that the Series 2005 A Bonds be sold to the Government pursuant to the terms and provisions of the Letter of Conditions.

I. The Issuer has complied with all requirements of West Virginia law and the Letter of Conditions relating to authorization of the acquisition, construction and operation of the Project and issuance of the Series 2005 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of the PSC Order, the time for rehearing and appeal of which has expired or will have been waived prior to the issuance of the Series 2005 A Bonds.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Series 2005 A Bonds 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 Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such 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.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF PROJECT

Section 2.01. Authorization of Acquisition and Construction of Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$5,793,000, in accordance with the plans and specifications prepared by the Consulting Engineers, approved by the Government and the Issuer and heretofore filed in the office of the Governing Body. The proceeds of the Series 2005 A Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, which are in an amount and otherwise compatible with the financing plan submitted to the Government.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. For the purposes of paying a portion of the costs of the Project and paying the costs of issuance of the Series 2005 A Bonds and related costs, there shall be and hereby are authorized to be issued negotiable Series 2005 A Bonds of the Issuer. The Series 2005 A Bonds shall be issued as a single bond, designated "Water Revenue Bonds, Series 2005 A (United States Department of Agriculture)," in the aggregate principal amount of not more than \$623,000, and shall have such terms as are set forth hereinafter or in the Supplemental Resolution.

Section 3.02. Terms of Bonds. The Series 2005 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the legal maximum rate, payable monthly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Series 2005 A Bonds.

The Series 2005 A Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, shall be payable as provided in the Series 2005 A Bond form hereinafter set forth, and shall have such other terms not inconsistent with this Resolution, as shall be set forth in the Supplemental Resolution and such Series 2005 A Bond form.

Section 3.03. Execution of Bonds. The Series 2005 A Bonds shall be executed in the name of the Issuer by the manual or facsimile signature of the Chairperson, and the seal of the Issuer shall be impressed thereon and attested by the manual or facsimile signature of 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 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Negotiability, Transfer and Registration. The Series 2005 A Bonds shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, but the Bonds, and the right to principal of and stated

interest on the Bonds, may only be transferred by transfer of the registration thereof upon the books of the Bond Registrar, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2005 A Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

No registration of transfer of the Series 2005 A Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Bonds.

The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, books for the registration and transfer of the Series 2005 A Bonds and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2005 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Government, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2005 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2005 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2005 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue 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 Registered Owner's furnishing the Issuer proof of ownership and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. All Bonds so surrendered shall be canceled and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.06. Bonds not to be Indebtedness of the Issuer. The Series 2005 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System, as herein provided. No Registered Owner of the Series 2005 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2005 A Bonds or the interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2005 A Bonds shall be secured by a first lien on the Net Revenues on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2005 A Bonds and the Prior Bonds and to make the payments into all funds and accounts provided for in this Resolution and the Prior Resolutions, are hereby irrevocably pledged to such payments as they become due.

Section 3.08. Form of Bonds. The text of the Series 2005 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$ _____

FOR VALUE RECEIVED, on this __ day of _____, 2005, CLAY COUNTY PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Clay County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of _____ DOLLARS (\$ _____), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of __% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$ _____, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the

Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public water facilities of the Issuer, the Project and any further improvements and extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Resolution duly adopted by the Issuer on _____, 200__, and a Supplemental Resolution duly adopted by the Issuer on _____, 200__ (collectively, 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 this Bond under the Resolution.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1994, DATED FEBRUARY 15, 1994, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$383,000; AND (2) WATER REVENUE BONDS, SERIES 1994 B, DATED OCTOBER 21, 1994, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$333,000 (COLLECTIVELY, 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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds, and from moneys in the reserve account created under the Resolution for this Bond (the "Series 2005 A Bonds Reserve Account") and unexpended proceeds of this Bond. 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 shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an 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 hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Resolution. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Resolution, this Bond is transferable, as provided in the Resolution, only upon the books of the Secretary of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

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

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

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

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

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

This Bond is given as evidence of a loan to the Issuer made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of 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, CLAY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated as of the date first written above.

Chairperson

[SEAL]

ATTEST:

Secretary

(Form of)

RECORD OF ADVANCES

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

(Form of)

ASSIGNMENT

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 3.09. Sale of Bonds. The Series 2005 A Bonds shall be sold to the Government pursuant to the terms and conditions of the Letter of Conditions. The provisions of the Letter of Conditions are specifically incorporated in this Resolution.

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 (or continued if previously established by the Prior Resolutions) and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund (established by the Prior Resolutions);
- (2) Renewal and Replacement Fund (established by the Prior Resolutions);
- (3) Depreciation Account (established by the Prior Resolutions); and
- (4) Series 2005 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special account is created with and shall be held by the Commission:

- (1) Series 2005 A Bonds 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. 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 herein provided.

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

(2) The Issuer shall next, each month, from the moneys in the Revenue Fund, (i) make the interest payments on the Prior Bonds in the amounts and on the dates required by the Prior Resolutions; and (ii) commencing on the day which is 30 days following the date of delivery of the Series 2005 A Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2005 A Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest set forth in the Series 2005 A Bonds.

(3) The Issuer shall next, each month, from the moneys in the Revenue Fund, (i) make the principal payments of the Prior Bonds in the amounts and on the dates required by the Prior Resolutions; and (ii) commencing on the day which is 24 months following the

date of delivery of the Series 2005 A Bonds and continuing on the corresponding day of each month, remit to the National Finance Office for deposit in the Series 2005 A Bonds Sinking Fund, the amount of principal set forth in the Series 2005 A Bonds.

The deposits into the Series 2005 A Bonds Sinking Fund provided in this paragraph and in Section 5.03A (2) above, constitute actual payments of principal of and interest on the Series 2005 A Bonds to the Government.

(4) The Issuer shall next, each month, from the moneys in the Revenue Fund, (i) make the reserve account payments into the Reserve Accounts of the Prior Bonds in the amounts and on the dates required by the Prior Resolutions; and (ii) commencing on the day which is 24 months following the date of delivery of the Series 2005 A Bonds and continuing on the corresponding day of each month, remit to the Commission for deposit in the Series 2005 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2005 A Bonds Reserve Requirement.

(5) The Issuer shall next, each month, from the moneys in the Revenue Fund, make the payments into the Depreciation Account in the amounts and on the dates required by the Prior Resolutions.

(6) The Issuer shall next, each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Resolutions and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided that, any deficiencies in any 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 Series 2005 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds as the same shall become due. Moneys in the Series 2005 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds as the same shall

come due, when other moneys in the Series 2005 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2005 A Bonds Reserve Account (if fully funded in an amount equal to the Series 2005 A Bonds Reserve Requirement) shall be transferred, not less than once each year, to the Series 2005 A Bonds Construction Trust Fund during construction of the Project and thereafter, to the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2005 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2005 A Bonds Reserve Account which result in a reduction in the balance of such account to an amount below the Series 2005 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2005 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay any interest on such Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

Interest, principal, or reserve account payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2005 A Bonds and the Prior Bonds, in accordance with the respective principal amounts then outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2005 A Bonds Reserve Account created hereunder, and all amounts required for such account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Government, the Issuer shall make the necessary arrangements whereby required payments into the Series 2005 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates hereunder.

Moneys in the Series 2005 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2005 A Bonds under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there

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

C. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent, or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges and the fees then due. If required by the Government, the Issuer shall make the necessary arrangements whereby payments to the Commission under this paragraph shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

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

E. If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, that all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Section 5.03A hereof, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority.

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

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

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. All moneys received from time to time from the sale of the Series 2005 A Bonds shall be deposited in the Series 2005 A Bonds Construction Trust Fund and shall be used solely to pay costs of the Project and until so expended, are hereby pledged as additional security for the Series 2005 A Bonds.

Section 6.02. Disbursements from Bond Construction Trust Fund. The Series 2005 A Bonds Construction Trust Fund shall be kept separate and apart from all other funds of the Issuer, and shall be drawn out, used and applied by the Issuer solely for the payment of the costs of the Project and purposes incidental thereto, including payment of any borrowings by the Issuer made for the purpose of temporarily financing a portion of the costs of the Project and payment of interest on the Series 2005 A Bonds prior to and during construction and for a period up to six months after completion of construction and for no other purposes whatsoever. If approved by the Government, the moneys in said fund shall be secured at all times by Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. If for any reason the amounts on deposit in the Series 2005 A Bonds Construction Trust Fund are not necessary for, or are not applied to, such purposes, then such unapplied amounts shall be deposited by the Issuer as determined by the rules and regulations of the Government. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys, until so applied, in favor of the Registered Owners of the Series 2005 A Bonds.

Expenditures or disbursements from the Series 2005 A Bonds Construction Trust Fund shall be made only after such expenditures or disbursements have been approved in writing by the Governing Body, the Consulting Engineers and the Government.

The Issuer shall coordinate with the Government on the monthly payment of the costs of the Project and shall submit invoices and requisitions as directed by the Government.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Registered Owner of the Series 2005 A Bonds. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2005 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as the Series 2005 A Bonds or the interest thereon are Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2005 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Registered Owner of the Series 2005 A Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2005 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2005 A Bonds shall be secured by a first lien on the Net Revenues on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2005 A Bonds and to make the payments into all funds and accounts and all other payments provided for in this Resolution and the Prior Resolutions are hereby irrevocably pledged, in the manner provided herein and therein, to such payments as the same become due, and for the other purposes provided in this Resolution and the Prior Resolutions.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by state law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of this Resolution and the Prior Resolutions. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved in the PSC Order and such rates are hereby adopted.

So long as the Series 2005 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in

this Resolution. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2005 A Bonds shall prove to be insufficient to produce the required sums set forth in this Resolution, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Resolution.

Section 7.05. Sale of the System. So long as the Prior Bonds are Outstanding, the System may not be sold, transferred, mortgaged, leased or otherwise disposed of, except in accordance with the terms of the Prior Resolutions. So long as the Series 2005 A Bonds are Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of, or encumbered (other than any statutory mortgage lien created under the Act on account of obligations issued within the restrictions hereof) only with the written consent of the Government and such consent will specify the disposition of any such sale or transfer.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. So long as the Series 2005 A 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 Series 2005 A Bonds; provided, however, that Parity Bonds may be issued as provided for in Section 7.07 hereof and in the Prior Resolutions (so long as the Prior Bonds are Outstanding). 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 subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2005 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein and in the Prior Resolutions have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the liens of the Series 2005 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2005 A Bonds and the interest thereon in this Resolution, or upon the System or any part thereof.

Section 7.07. Parity Bonds. So long as the Prior Bonds are Outstanding, no Parity Bonds shall be issued except in accordance with the terms of the Prior Resolutions. In addition, 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 provided herein and with the prior written consent of the Government.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Prior Bonds and the Series 2005 A Bonds.

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

So long as the Series 2005 A Bonds are Outstanding, no Parity Bonds shall be issued at any time, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

- (1) The Bonds 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 foregoing limitation may be waived or modified by the written consent of the Registered Owners of the Series 2005 A Bonds, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the Series 2005 A Bonds are no longer Outstanding, the following parity requirement shall be met:

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

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

The "estimated average increased annual Net Revenues to be received in each of the three succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer and approved by the PSC, the period for appeal of which has expired prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer and approved by the PSC, the period for appeal of which has expired prior to issuance of such Parity Bonds.

All covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Registered Owners of the Series 2005 A Bonds and the Registered Owners of any Parity Bonds issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their respective liens on the revenues of the System and their respective source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of another series on a parity therewith. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds 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 liens 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 Series 2005 A Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Government and its 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. The Issuer shall submit to the Government such documents and information as it may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any State and federal grants or other sources of financing for the Project.

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Series 2005 A Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles 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 and on the forms, books and other bookkeeping records as prescribed by the Governing Body.

The Issuer shall file with the Government, or any Registered Owner of the Series 2005 A Bonds requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution and the status of all said funds and accounts.
- (C) The amount of any Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with

the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2005 A Bonds and shall submit said report to the Government. Such audit report submitted to the Government shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and this Resolution and that the Gross Revenues are adequate to meet the Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Letter of Conditions and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

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

Section 7.09. Rates. Prior to issuance of the Series 2005 A Bonds, approvals of equitable rates or charges for the use of and service rendered by the System shall have been obtained in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reductions in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2005 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit respectively in the Series 2005 A Bonds Reserve Account and

the Reserve Accounts for obligations on a parity with the Series 2005 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2005 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services of the System described in Section 7.04.

Section 7.10. Operating Budget. The Issuer shall annually, at least 30 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 Government within 30 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 a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made, except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Government and to any Registered Owner of the Series 2005 A Bonds within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Government and any Registered Owner of the Series 2005 A Bonds or anyone acting for and on behalf of such Registered Owner.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain the certificate of the Consulting Engineers, certifying that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Government, the Project will be adequate for the purposes for which it was designed, the funding plan as submitted to the Government is sufficient to pay the costs of the acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained. The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Government, 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. The Issuer shall employ qualified operating personnel properly certified by the State to operate the System so long as the Series 2005 A Bonds are Outstanding.

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, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals, or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent, to the full extent permitted or authorized by the Act, the rules and regulations of the PSC and other laws of the State.

Whenever any fees, rates, rentals or other charges for the services or facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, fees, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations of the PSC, discontinue and shut off the services of the System to all delinquent users of the services of the System, and will not restore such services of the System until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid, and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. 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 hereby covenants and agrees that, so long as the Series 2005 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following

amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured prior to acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground insurable portions of the System, including machinery and equipment housed therein, in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than \$1,000,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 from claims for damage to property of others which may arise from the operation of the System.

(C) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated for the benefit of the Issuer, with limits of not less than \$1,000,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 from claims for damage to property of others which may arise from such operation of vehicles.

(D) Workers' Compensation Coverage for All Employees of the System Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each contractor dealing 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 Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

(E) Fidelity Bonds will be provided as to every member, officer and employee of the Issuer having custody of the Revenue Fund or of any other funds or property of the System in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount required by the Government and to be increased thereafter as necessary to cover the maximum amount of funds under control of that position at any one time.

(F) Flood Insurance will be obtained by the Issuer if available; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

(G) Construction Bonds. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the PSC, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the PSC and other state agencies necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2005 A Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Statutory Mortgage Lien. For the further protection of the Registered Owners of the Series 2005 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, and shall take effect immediately upon delivery of the Series 2005 A Bonds; provided however, that the statutory mortgage lien in favor of the Registered Owners of the Series 2005 A Bonds shall be on a parity with the statutory mortgage lien in favor of the Registered Owners of the Prior Bonds.

Section 7.19. Compliance with Letter of Conditions and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Letter of Conditions, this Resolution and the Act. The Issuer shall also comply with all applicable laws, rules and regulations issued by the Government or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.20. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2005 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investment of Funds. 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 or the Depository Bank, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section.

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 owner, including the value of accrued interest and giving effect to the amortization of discount or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2005 A Bonds are Outstanding.

Notwithstanding the foregoing, any investments made pursuant to this Resolution shall comply with the guidelines of the Government.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2005 A Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Series 2005 A Bonds; or

(B) If default occurs in the Issuer’s observance of any of the covenants, agreements or conditions on its part relating to the Series 2005 A Bonds set forth in this Resolution, any Supplemental Resolution or the Series 2005 A Bonds and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Government, the Depository Bank, the Bond Registrar, any Paying Agent or a Registered Owner of a Bond; or

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

(D) If a default occurs under the Prior Resolutions or the Prior Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2005 A Bonds 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 of the Series 2005 A Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2005 A Bonds may, by proper legal action, compel the performance of the duties of the Issuer under this Resolution and the Act, including, the completion of the Project, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default, with respect to the Bonds, the Registered Owner shall, in addition to all other remedies or rights,

have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project, or both, on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and any interest thereon and the deposits into the funds and accounts herein provided and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate and maintain, manage and control the System, 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 the System as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Resolution for any 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 Event of Default, any Registered Owner of Bonds issued pursuant to this Resolution 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 herein above 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 Bonds issued pursuant to this Resolution. 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, and the curing and making good of any default under the provisions of this Resolution, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage, or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Registered Owners of the Series 2005 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then this Resolution and 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 Series 2005 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through direct payment of the entire outstanding principal of and all accrued interest on the Series 2005 A Bonds to the Registered Owners thereof, the Issuer may not defease the Series 2005 A Bonds or provide for payment thereof by escrow or other similar arrangements.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Modification or Amendment of Resolution. Prior to the issuance of the Series 2005 A Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2005 A Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto that would materially and adversely affect the rights of Registered Owners of the Series 2005 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2005 A Bonds 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 funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2005 A Bonds required for consent to the above-permitted amendments or modifications.

Section 11.02. Resolution Constitutes Contract. The provisions of this Resolution shall constitute a contract between the Issuer and the Registered Owners of the Series 2005 A Bonds and no change, variation or alteration of any kind of the provisions of the Resolution shall be made in any manner, except as in this Resolution provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution, any Supplemental Resolution or the Series 2005 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Resolutions. Except for the Prior Resolutions, all orders or resolutions and parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between the Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.06. Covenant of Due Procedure. 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 Chairperson, 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. Public Notice of Proposed Financing. Prior to making formal application to the PSC for a certificate of public convenience and necessity and adoption of this Resolution, the Secretary shall have caused to be published in a newspaper of general circulation in each municipality in Clay County Public Service District and within the boundaries of the Issuer, a Class II legal advertisement stating:

- (a) The maximum amount of the Series 2005 A Bonds to be issued;
- (b) The maximum interest rate and terms of the Series 2005 A Bonds authorized hereby;
- (c) The public service properties to be acquired or constructed and the cost of the same;
- (d) The maximum anticipated rates which will be charged by the Issuer; and
- (e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the PSC.

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

Adopted this 15th day of December, 2005.

Chairperson and Member

Member

Member

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of CLAY COUNTY PUBLIC SERVICE DISTRICT on the 15th day of December, 2005.

Dated this 19th day of December, 2005.

[SEAL]

Secretary

12/07/05
006676/00302

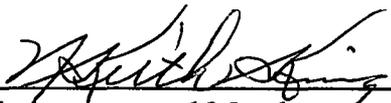
full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairperson, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred, and are, duly in office and duly qualified for such office.

Section 11.07. Public Notice of Proposed Financing. Prior to making formal application to the PSC for a certificate of public convenience and necessity and adoption of this Resolution, the Secretary shall have caused to be published in a newspaper of general circulation in each municipality in Clay County Public Service District and within the boundaries of the Issuer, a Class II legal advertisement stating:

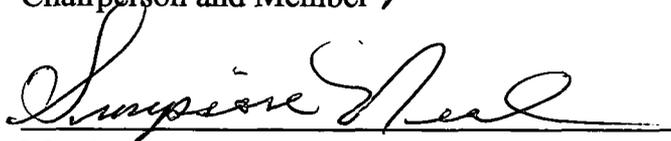
- (a) The maximum amount of the Series 2005 A Bonds to be issued;
- (b) The maximum interest rate and terms of the Series 2005 A Bonds authorized hereby;
- (c) The public service properties to be acquired or constructed and the cost of the same;
- (d) The maximum anticipated rates which will be charged by the Issuer; and
- (e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the PSC.

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

Adopted this 15th day of December, 2005.



Chairperson and Member



Member

Member

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of CLAY COUNTY PUBLIC SERVICE DISTRICT on the 15th day of December, 2005.

Dated this 19th day of December, 2005.

[SEAL]



Simpson Neal
Secretary

12/07/05
006676/00302

EXHIBIT A

PROJECT DESCRIPTION

The Project consists of a water line extension to serve Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence, West Virginia, together with all appurtenant facilities.

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

2.5

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DESIGNATING A DEPOSITORY BANK AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Clay County Public Service District (the "Issuer") has duly and officially adopted a Bond Resolution on December 15, 2005 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF CLAY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$623,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Resolution provides for the issuance of the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), of the Issuer, in an aggregate principal amount not to exceed \$623,000 (the "Bonds"), all in accordance with Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and in the Resolution it is provided that the exact principal amount, date, maturity date, interest rate, payment

schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Bonds are proposed to be purchased by the Government pursuant to the Letter of Conditions; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

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

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Clay County Public Service District Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), of the Issuer, in the original aggregate principal amount of \$623,000. The Bonds shall be issued in the form of one Bond, shall be dated the date of delivery, shall mature forty years from the date thereof, shall be numbered AR-1, and the principal amount advanced under the Bonds shall bear interest at the rate of 4.25% per annum. Monthly installments of interest only on the amounts advanced under the Bonds are payable 30 days following the date of delivery of the Bonds and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Bonds, and thereafter, monthly installments of principal of and interest on the Bonds, in the aggregate amount of \$2,760, are payable on the corresponding day of each month, except that the final installment on the Bonds shall be paid at the end of 40 years from the date of the Bonds in the sum of the unpaid principal and interest due on the date thereof. The Bonds are subject to prepayment as set forth in the Resolution and the Bonds. All principal and interest payments on the Bonds will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

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

Section 3. The Issuer hereby approves and accepts the Letter of Conditions and all amendments thereto, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer hereby appoints and designates Clay County Bank, Clay, West Virginia, to serve as the Depository Bank under the Resolution.

Section 5. The proceeds of the Bonds, as advanced from time to time, shall be deposited in the Series 2005 A Bonds Construction Trust Fund for payment of the costs of the Project and the costs of issuance of the Bonds and related costs.

Section 6. The Chairperson and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Resolution approved and provided for, to the end that the Bonds may be delivered to the Government pursuant to the Letter of Conditions on or about December 19, 2005.

Section 7. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

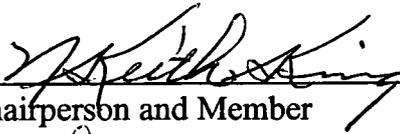
Section 8. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Resolution held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2005 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 9. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

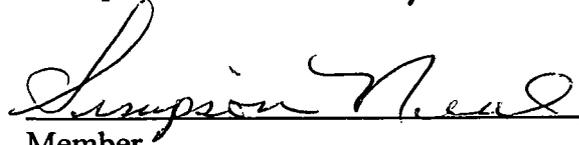
Section 10. The Issuer hereby approves all contracts relating to the financing, acquisition and construction of the Project and the Chairperson is hereby authorized and directed to execute and deliver all such contracts.

Section 11. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 15th day of December, 2005.



Chairperson and Member



Member

Member

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of CLAY COUNTY PUBLIC SERVICE DISTRICT on the 15th day of December, 2005.

Dated this 19th day of December, 2005.

[SEAL]



Simpson Neal
Secretary

11/15/05
006676/00302



CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

2.6

MINUTES ON ADOPTION OF BOND RESOLUTION
AND SUPPLEMENTAL RESOLUTION

On this 19th day of December, 2005, the undersigned duly appointed Secretary of the Public Service Board of Clay County Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of said Public Service Board:

The Public Service Board of Clay County Public Service District met in special session, pursuant to notice duly posted, on the 15th day of December, 2005, in Clay, West Virginia, at the hour of 10:00 a.m.

PRESENT: Keith King - Chairperson and Member
Simpson Neal - Secretary and Member
Teddy Underwood - Member
Cynthia Schoolcraft - Treasurer

ABSENT: None

Keith King, Chairperson, presided, and Simpson Neal, acted as Secretary. The Chairperson announced that a quorum of members was present and that the meeting was open for any business properly before it.

First, the Chairperson presented the amended Rules of Procedure for the Board and caused the same to be read and there was discussion. Thereupon, on motion duly made and seconded, it was unanimously ordered that said amended Rules of Procedure be adopted and be in full force and effect on and from the date hereof.

Next, the Chairperson presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF CLAY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$623,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairperson presented a proposed Supplemental Resolution in writing entitled:

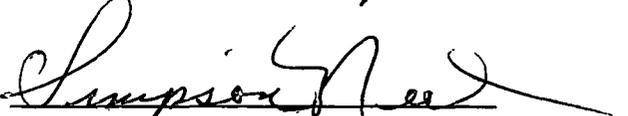
SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2005 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DESIGNATING A DEPOSITORY BANK AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairperson presented a proposed Resolution in writing approving the payment of invoices from proceeds of the Bonds. Thereupon, upon motion duly made and seconded, it was unanimously ordered that said Resolution be adopted and be in full force and effect on and from the date hereof.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting be adjourned.


Chairperson


Secretary

CERTIFICATION

I hereby certify that the foregoing action of CLAY COUNTY PUBLIC SERVICE DISTRICT remains in full force and effect and has not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature as of the date first written above.


Secretary

11/16/05
006676/00302

PUBLISHERS CERTIFICATE OF PUBLICATION

CLAY COUNTY FREE PRESS

CLAY, WEST VIRGINIA 25043-0180

**Legal Notice:
Notice of Prefiling with the West Virginia Public Service Commission**

I, Clinton N. Nichols, Managing Editor of the Clay County Free Press, a Newspaper of General Circulation, Published at Clay, in the county of Clay, West Virginia, do Certify that the attached:

Legal Notice

was published in said Newspaper fo

(2) times

consecutive weeks, to-wit, in its issues c

Aug. 14 & 23, 2000, 16

Clinton Nichols

Managing Editor

Notice is hereby given that the Clay County Public Service District has made a pre-filing with the West Virginia Public Service Commission setting forth its intent to make a formal application for a Certificate of Convenience and Necessity for a project designated as the Clay County Public Service District Water System Improvements - Tuckers Bottom, Fola, Upper part of Bickmore, Indore, Lizemore, and Independence. In connection herewith, you are hereby notified of the following:

1. To complete this project the Clay County Public Service District intends to borrow a sum not to exceed \$623,000, from the USDA Rural Utilities Service.

2. The loan will be scheduled for repayment over a forty (40) year period. Payments for the term of the loan shall be amortized monthly with an interest rate not to exceed four and one-half percent (4.5%).

3. The Clay County Public Service District proposes to construct approximately 18 miles of 6-inch and 8-inch water main, four (4) water storage tanks, three (3) booster stations, and associated improvements all to service approximately 260 new customers located in, near, and around the upper part of Bickmore, Lizemore, Independence, Fola, and the Tucker's Bottom areas of Clay County.

4. The estimated cost of the project is \$3,906,000, which will be financed by the aforementioned loan and a \$1,900,00 grant from the USDA Rural Utilities Service and a grant from the West Virginia Infrastructure and Jobs Development Council in the amount of \$1,383,000.

5. The Clay County Public Service District does not anticipate an increase in rates as a result of the proposed project; therefore, the following current rates will remain in effect.

First 3,000 gallons at \$10.04 per M gals.

\$30.12 per month

Next 3,000 gallons at \$9.54 per M gals

\$28.62 per month

Next 4,000 gallons at \$9.07 per M gals

\$36.28 per month

Next 10,000 gallons at \$8.85 per M gals

\$85.80 per month

Over 20,000 gallons at \$8.11 per M gals

\$162.20 per month

6. A formal application for the issuance of a Certificate of Convenience and Necessity will be filed on or about October 2, 2000.

7. The West Virginia Public Service Commission may grant its consent and approval for the Certificate, or any other request for approval under the provisions of West Virginia Code Chapter 16, Article 13A, Section 25, subject to such terms and conditions as may be necessary for the protection of the public interest pursuant to the provisions of West Virginia code Chapter 24, or may withhold such consent and approval for the protection of the public interest.

Dated this the 14th day of August, 2000.

Clay County Public Service District

Keith King, Chairman

Gordon Billheimer, Attorney

2tc8/16

Taken, Sworn to and Subscribed by the se

Clinton N. Nichols before me, in Clay Cour

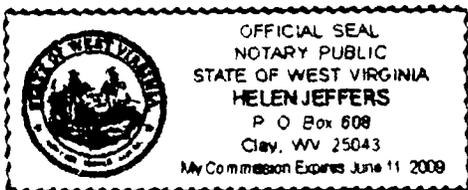
West Virginia this 23 day of August

16 2000

Helen Jeffers

Notary-Pul

My Commission Expires June 11, 2001



Sandra Squire
Executive Secretary

13



PUBLISHERS CERTIFICATE OF PUBLICATION

CLAY COUNTY FREE PRESS

CLAY, WEST VIRGINIA 25043-0180

I, Brian Moore, Managing Editor of the Clay County Free Press, a Newspaper of General Circulation, Published at Clay, in the county of Clay, West Virginia, do Certify that the attached:

Legal Ad

was published in said Newspaper for

One

consecutive weeks, to-wit, in its issues of

Nov. 30, 20 05.

B. Moore

Managing Editor

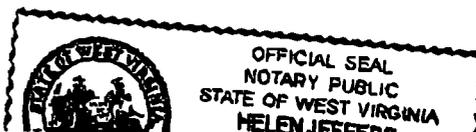
Taken, Sworn to and Subscribed by the said Brian Moore before me, in Clay County, West Virginia this 15 day of Dec, 20 05.

Helen Jefferson
Notary Public

My commission expires June 11, 2009

LEGAL NOTICE
Clay County Public Service District
NOTICE OF SPECIAL MEETING
The Public Service Board of Clay County Public Service District (the "District") will hold a special meeting on **Thursday, December 15, 2005, at 10:00 a.m.**, prevailing time, at the District's office on 247 Main Street, Clay, West Virginia, for the following purposes:
1. To consider and adopt amended Rules of Procedure for the Board.
2. To consider and adopt a proposed Bond Resolution authorizing its Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), in the aggregate principal amount of \$623,000 (the "Bonds"), to pay the costs of acquisition and construction of extensions and improvements to the existing public water facilities of the District (the "Project") and the costs of issuance and related costs.
3. To consider and adopt a proposed Supplemental Resolution approving the terms and other provisions of the Bonds.
4. To consider and adopt a proposed Resolution approving the invoices in connection with the Project and payment with proceeds of the Bonds.
5. To consider and approve all other documents and matters in connection with the financing and construction of the Project.
This meeting is open to the press and the public and any person interested may attend such meeting.

Simpson Neal, Secretary
11/11/30





SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$623,000

FOR VALUE RECEIVED, on this 19th day of December, 2005, CLAY COUNTY PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Clay County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of SIX HUNDRED TWENTY THREE THOUSAND DOLLARS (\$623,000), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.25% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$2,760, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

NUMBER

AR-1 SPECIMEN

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public water facilities of the Issuer, the Project and any further improvements and extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Resolution duly adopted by the Issuer on December 15, 2005, and a Supplemental Resolution duly adopted by the Issuer on December 15, 2005 (collectively, 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 this Bond under the Resolution.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1994, DATED FEBRUARY 15, 1994, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$383,000; AND (2) WATER REVENUE BONDS, SERIES 1994 B, DATED OCTOBER 21, 1994, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$333,000 (COLLECTIVELY, 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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds, and from moneys in the reserve account created under the Resolution for this Bond (the "Series 2005 A Bonds Reserve Account") and unexpended proceeds of this Bond. 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 shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an 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 hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owner of this Bond for the terms of which reference is made to the Resolution. Remedies provided the Registered Owner of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

Subject to the registration requirements in the Resolution, this Bond is transferable, as provided in the Resolution, only upon the books of the Secretary of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

Subject to the registration requirements in the Resolution, 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.

AR-1 SPECIMEN

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

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

If at any time it so appears to the Government that the Issuer may be able to obtain a loan from a responsible cooperative or private creditor at reasonable rates and terms for loans for such purposes and period of time, the Issuer will at the Government's request apply for and accept such loan in sufficient amount to repay the Government.

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

This Bond is given as evidence of a loan to the Issuer made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

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

AR-1

IN WITNESS WHEREOF, CLAY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated as of the date first written above.

[Signature]

Chairperson



[SEAL]

ATTEST:

[Signature]

Secretary

AR-1

RECORD OF ADVANCES

SPECIALLY

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$430,206.72	12/19/05	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	
		TOTAL	\$

AR-1

SPECIMEN

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:

BOND REGISTER

2.9

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$623,000	December 19, 2005

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

United States of America
National Finance Office
1520 Market Street
St. Louis, Missouri 63103

Signature of Registrar:

Clay County Public Service District


Secretary

11/15/05
006676/00302

M0435217.1

CLAY COUNTY PUBLIC SERVICE DISTRICT

WATER REVENUE BONDS

BOND RESOLUTION

CLAY COUNTY PUBLIC SERVICE DISTRICT

WATER REVENUE BONDS

BOND RESOLUTION

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Exhibit A - Project Description

CLAY COUNTY PUBLIC SERVICE DISTRICT

BOND RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS FACILITY OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF \$383,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS AND THE SALE THEREOF TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. 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, 1931, as amended and in effect on the date of adoption of this Resolution.

"Additional Bonds" means additional bonds issued under the provisions and within the limitations prescribed by Section 6.06.

"ARC" means the Appalachian Regional Commission and any successor to the functions of the ARC.

"ARC Grant" means the grant from ARC in the amount of \$600,000.

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

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

"Bonds" means the \$383,000 in aggregate principal amount of Water Revenue Bonds and any Additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

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

"Closing Date" means the date upon which there is an exchange of the Bonds for all or a significant portion of the proceeds representing the purchase of the Bonds by FmHA.

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

"Consulting Engineers" means Chapman Technical Group, St. Albans, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of waterworks systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Construction Trust Fund" means the Construction Trust Fund established by Section 5.02.

"Costs" or "Costs of the Project" means those costs described in Section 1.03I 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 Bonds 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.

"Depository Bank" means a bank or national banking association located in the State, eligible under the laws of the State to receive deposits of state and municipal funds and insured by the FDIC, which Depository Bank shall be named in the Supplemental Resolution.

"Depreciation Account" means the Depreciation Account established by Section 4.01(5).

"Event of Default" means any event or occurrence specified in Section 7.01.

"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.

"FmHA" or "Government" means the United States Department of Agriculture, Farmers Home Administration, which is expected to be the original purchaser of the Bonds.

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

"Government Grant" means the grant from the Government in the amount of \$577,000.

"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, (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.

"Grants" means collectively the ARC Grant, the Small Cities Block Grant and the Government Grant.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereafter 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 purchased pursuant to Section 8.01) or any Tap Fees.

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

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

"Letter of Conditions" means the letter of conditions of FmHA dated August 25, 1992, and any supplements or amendments thereto.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, fiscal agents, depository banks, registrars, paying agents and trustees other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, of any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from and decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii)

any Bond deemed to have been paid as provided in Section 9.06 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Paying Agent" means the bank or banks or other entity designated as such for the Bonds in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

"Project" means the project described in Exhibit A attached hereto.

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

"PSC Order" means the recommended decision of the PSC in Case No. 93-0066-PWD-CN, which was entered by the Administrative Law Judge of the PSC on February 24, 1993, was amended on September 8, 1993 and became the final order on September 10, 1993, granting the Issuer a Certificate of Convenience and Necessity to construct the Project, approving the financing thereof and approving rates adequate for the costs thereof.

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

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such

obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of any 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;

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

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

(h) The West Virginia "consolidated fund" managed by the West Virginia State

Board of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia Code, 1931, as amended;

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

(j) Advanced - Refunded Municipal Bonds.

"Reserve Account" means the Reserve Account established by Section 4.01(A)(4).

"Reserve Requirement" means an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in any succeeding Fiscal Year.

"Resolution" means this resolution, as from time to time amended or supplemented.

"Revenue Fund" means the Revenue Fund established by Section 4.01(A).

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

"Sinking Fund" means the Sinking Fund established by Section 4.01(A)(2).

"Small Cities Block Grant" means the \$150,000 grant from the United States Department of Housing and Urban Development, Small Cities Block Grant Program.

"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 authorizing the sale of the Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Bonds and not so included may be included in another Supplemental Resolution.

"System" means the public service properties to be used for or in connection with the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for industrial, public, private or other uses, owned

by the Issuer, and any improvements or extensions thereto hereafter constructed or acquired from any sources whatsoever, and includes the Project.

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

"Water Tap Fee" means the fee to be paid by the Issuer to the Town of Clay pursuant to a Water Purchase Agreement.

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

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

A. The Issuer does not currently own a waterworks distribution system. Residents in the District are not currently served by public water or are being served by the Town of Clay.

B. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the District that there be acquired and constructed a public waterworks system, to furnish water service to residences, premises and businesses residing or located within and without the area of the Issuer, the acquisition and construction to be permanently financed, in part, by the issuance of the Bonds to FmHA all in accordance with the plans and specifications prepared by the Consulting Engineers, which Project is described in Exhibit A. The District will purchase water for distribution from the Town of Clay.

C. The Issuer will derive revenues from the System, and, said revenues are not pledged or encumbered in any manner.

D. The estimated maximum cost of the construction of the Project is \$1,710,000. The Project will be financed with the proceeds of the sale of the Bonds anticipated to be in the amount of \$383,000, from the ARC Grant in the amount of \$600,000, from the Small Cities Block Grant in the amount of \$150,000 and from the Government Grant in the amount of \$577,000.

E. 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 Bonds authorized to be issued pursuant to this Resolution and all sinking funds, reserve and other payments provided for in this Resolution. Upon the issuance of the Bonds, the Issuer will grant the Government a first lien on the Net Revenues of the System.

F. It is deemed necessary for the Issuer to issue its Bonds, in part 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 therefor; the cost of the construction of said extensions, additions, betterments and improvements to the System and any other expenses necessary, incidental, desirable or appurtenant to the acquisition and construction of the Project and such replacements as are necessary therefor; the Water Tap Fee; the cost of interim financing for such Project; interest on the Bonds, prior to, during and for six months after the estimated date of completion of construction of the Project; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; expenses for the service of registrars, paying agents, depositories or other agents in connection with the issuance of the Bonds, and such other expenses as may be necessary or desirable to said acquisition and construction of the project and placing the same in operation and the financing authorized by this Resolution.

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

H. It is in the best interest of the Issuer that it enter into the Water Purchase Agreement and from the proceeds of the Project financing pay the Water Tap Fee.

I. It is in the best interests of the Issuer that its Bonds be sold to FmHA pursuant to the terms and provisions of the Letter of Conditions.

J. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of the PSC Order, the time for rehearing and appeal of which have expired.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds 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 equal benefit, protection and security of the Registered Owners of any and all of such Bonds, all 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.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND
CONSTRUCTION OF PROJECT

Section 2.01. Authorization of Acquisition and Construction of Project. There is hereby authorized the construction and acquisition of the Project in accordance with the plans and specifications which have been prepared by the Consulting Engineers; provided, that such plans and specifications, and the construction and acquisition of the Project in accordance therewith, are subject to the specific authorization by the Board pursuant to a Supplemental Resolution.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions hereof, the Bonds of the Issuer, to be known as "Clay County Public Service District Water Revenue Bonds" (the "Bonds") are hereby authorized to be issued in the aggregate principal amount of \$383,000 for the purpose of permanently financing a portion of the Costs of the Project.

Section 3.02. Description of Bonds. The Bonds shall be issued as fully registered Bonds with a record of advances and payments attached, numbered R-1 upward, and shall be dated the date of delivery thereof. The Bonds shall bear interest from the date of delivery on the amount outstanding on the interest payment date as evidenced on the record of advances and payments, payable monthly, commencing on the fifteenth day of the month following the month of delivery of the Bond and on the fifteenth day of each month thereafter for the first 24 months after the date thereof and thereafter on the fifteenth day of each month in installments of principal and interest in the aggregate amount of \$1,881 except that the final installment shall be paid at the end of 40 years from the date of the Bond, at a rate, not exceeding five percent (5%) per annum, as shall be determined by the Supplemental Resolution and shall be sold for the par value thereof.

The Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, shall be payable as provided in the Bond form hereinafter set forth, and shall have such other terms not inconsistent with this Resolution, as shall be set forth in the Supplemental Resolution and such Bond form.

The series designation shall be as set forth in the Supplemental Resolution.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the manual or facsimile signature of the Chairman, and the seal of the Issuer shall be impressed thereon and attested by the manual or facsimile signature of 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 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the

execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No 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 form set forth in Section 3.09, 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 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds 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 Bonds 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 Bonds 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 thereof 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 or transferring the Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and

the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obligated to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The 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 Holders 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 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds shall be secured forthwith equally and ratably and on a parity with each other, by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments as hereinafter provided are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Bonds. The text of the Bonds shall be in substantially the following form, with such omissions,

insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS
SERIES 1994

No. R-1

\$383,000

February 15, 1994
(Date)

United States Department of Agriculture
Farmers Home Administration
Morgantown, West Virginia 26505

FOR VALUE RECEIVED, the Clay County Public Service District, a public corporation organized and existing under the laws of, and a political subdivision of, the State of West Virginia, in Clay County (herein called the "Borrower"), promises to pay to the order of the United States Department of Agriculture, Farmers Home Administration (herein called the "Government"), at its National Finance Office, St. Louis, Missouri, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of Three Hundred Eighty Three Thousand Dollars (\$383,000) or such lesser amount as shall then be reflected on the Record of Advances and Payments attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 5% per annum. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto. Interest shall accrue only on the amount of each advance from its actual date as listed on said Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing the fifteenth day of the month following the month of delivery of this Bond and on the fifteenth day of each month thereafter for the first 24 months after the date hereof, and thereafter on the fifteenth day of each month in installments of principal and interest in the aggregate amount of \$1,881 except the final installment shall be paid at the end of forty years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and prepayments may be made as

provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

Pre-payments of scheduled installments, or any portion thereof, may be made at any time at the option of the Borrower. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

Any amount advanced or expended by the Government for the collection hereof, or to preserve or to protect any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government, shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government. Borrower has granted to the Government a lien on the proceeds of this Bond until such proceeds are expended for authorized purposes.

This Bond is issued to permanently finance a portion of the costs of acquisition and construction of a waterworks distribution system (the "Project" and together with any further extensions, additions, betterments and improvements thereto, herein called the "System"); to pay interest on the Bonds during acquisition and construction and for up to six months after completion of the Project; and to pay certain issuance and related costs in connection therewith. This Bond is authorized and issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution duly adopted by the Board of the Borrower on the 3rd day of February, 1994, and supplemented by a Supplemental Resolution duly adopted by said Board on the 3rd day of February, 1994 (collectively, the "Resolution"), and is subject to all the terms and conditions of said Resolution. 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 is payable only from and secured by a pledge of a first lien on the Net Revenues (as defined in the Resolution) to be derived from the operation of the System, moneys in the Reserve

Account created under the Resolution (the "Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on this Bond, and all bonds which may be issued for the construction, acquisition, improvement, extension or betterment of such System as and when the same become due and payable, and which shall be set aside and remitted to the Government for the Bonds as provided herein and in the Resolution. This Bond does not constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provisions or limitations, nor shall said Borrower be obligated to pay the same or the interest hereon except from the Net Revenues derived from the operation of said System, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Borrower has covenanted and agreed to establish and maintain just and equitable rates or charges for the use of such System and the services rendered thereby, which shall be sufficient to provide for the proper and reasonable expenses of operation, repair and maintenance of said 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 year of principal of and interest on the Bonds and on all obligations secured by or payable from such revenues prior to or on a parity with the Bonds; provided that when the Reserve Fund for the Bonds is funded at the maximum amount required by the Resolution, then the balance each year must be equal to at least 110% of the amount required to pay the maximum amount due in any ensuing year of principal of and interest on the Bonds. The Borrower has entered into certain further covenants with the owner of this Bond for the terms of which reference is made to said Resolution. Remedies provided the owner of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of the Registrar which shall be kept for that purpose at the office of the Registrar, by the owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar duly executed by the owner or its attorney or legal representative duly authorized in writing.

Subject to registration requirements, 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.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing

private and cooperative rates and terms in or near its community for loans for such purposes and periods of time.

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

The use on any proceeds of this Bond for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity will constitute an Event of Default under the Resolution.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts connected with the issuance hereof, as provided by law and the Resolution, shall be applied solely to the costs of acquisition and construction of the Project, 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 said Borrower, 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 of the Borrower has been pledged to and will be set aside into said special fund by the Borrower 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.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, THE CLAY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its seal to be hereunto impressed and attested by its Secretary, all as of the date first written above.

CLAY COUNTY PUBLIC SERVICE DISTRICT

Chairman
P. O. Box 550
Clay, West Virginia 25043

[SEAL]

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Clay County Public Service District Water Revenue Bonds, Series 1994, described in the within-mentioned Resolution and has been duly registered in the name of the United States Department of Agriculture, Farmers Home Administration as of the date set forth below.

Date: February 15, 1994

CLAY COUNTY BANK, as Registrar

By _____
Its Authorized Officer

RECORD OF ADVANCES AND PAYMENTS

Advances

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	
TOTAL:	\$	

UNITED STATES DEPARTMENT OF
AGRICULTURE, FARMERS HOME
ADMINISTRATION

By: _____

(Title)

RECORD OF ADVANCES AND PAYMENTS

Payments

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

TOTAL: \$ _____

UNITED STATES DEPARTMENT OF
AGRICULTURE, FARMERS HOME
ADMINISTRATION

By: _____

(Title)

[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 3.10. Sale of Bonds. The Bonds shall be sold to FmHA pursuant to the terms and conditions of the Letter of Conditions. The provisions of the Letter of Conditions are specifically incorporated in this Resolution.

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. System Revenues and Application Thereof.

So long as the Bonds shall be Outstanding and unpaid, the Issuer covenants with the Bondholders as follows:

(A) The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund which is hereby established and created. 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 herein provided. Funds in the Revenue Fund shall be disposed of only in the following manner and order of priorities.

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

(2) Next from the moneys in the Revenue Fund, the Issuer shall on the first day of each month commencing on the first day of the month following the month of delivery of the Bonds, apportion and set apart out of the Revenue Fund and remit to the office and place designated by the Bonds (herein called the "Sinking Fund") the monthly payment of interest set forth in the Supplemental Resolution or such lesser amount as is required to pay the interest on the Bonds as evidenced by the Record of Advances and Payments attached to the Bonds as set forth in the Bond form in Section 3.09.

(3) Next from the moneys in the Revenue Fund, the Issuer shall on the first day of each month commencing on the first day of the month following the month of delivery of the Bonds, apportion and set apart from the Revenue Fund and remit to the Sinking Fund the monthly payment of principal set forth in the Supplemental Resolution or such lesser amount as is evidenced by the Record of Advances and Payments attached to the Bond as set forth in the Bond form in Section 3.09, such amount or amounts being the amount required to amortize the principal of the Bonds over the life of the Bonds.

The deposits to the Sinking Fund provided in this paragraph and in (2), above, constitute actual payments of principal and interest on the Bonds issued to the Government. The amounts required for principal and interest payments on the Bonds issued hereunder other than to the Government shall be deposited in a sinking fund created by a Supplemental Resolution.

(4) The Issuer shall next transfer from the Revenue Fund and deposit in a Reserve Account at the Depository Bank (herein the "Reserve Account"), or in the case of Bonds other than the Bonds originally authorized hereby in a reserve account in a sinking fund created by Supplemental Resolution or otherwise as designated by a Supplemental Resolution, on the first day of each month of each year beginning with and including the month in which payments from the Revenue Fund for interest on the Bonds are commenced, an amount equal to one tenth (1/10) of the amount deposited into the Sinking Fund, as set forth above.

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. Moneys in the Reserve Account shall be used only for the purpose of payment of maturing principal of or interest on the Bonds when moneys in the Revenue Fund or, in the case of bonds other than the Bonds originally authorized hereby, the funds in a sinking fund created by Supplemental Resolution are insufficient therefor and for no other purposes.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payment to the Sinking Fund and Reserve Account, including any deficiencies for prior payments, have been made in full.

As and when Additional Bonds ranking on a parity with the Bonds are issued, provision shall be made by Supplemental Resolution for additional payments sufficient to pay the interest on such Additional Bonds and to accomplish retirement thereof at or before maturity and to accumulate a balance in the Reserve Account in an amount equal to the maximum provided and required to be paid in principal and interest in any succeeding year for account of all the Bonds.

(5) Thereafter, from the moneys remaining in said Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after commencement of operation of the Project, remit to the Depository Bank for deposit in a special account to be designated the "Depreciation Account," which account is hereby established and created, a sum equal to \$190 (\$2,280 per year). No further payments shall be required to be made into said Depreciation Account when there shall have been deposited therein, and so long as there shall remain on deposit therein, an amount equal to one year's maximum principal and interest payments. All funds in said Depreciation Account shall be kept apart from all other funds, and all or any part of said fund may be invested as provided by Article VIII. Withdrawals and disbursements may be

made from said Depreciation Account for replacements, emergency repairs, additions, betterments or improvements to the System; deficiencies in the payment of principal and interest on the Bonds, or debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such additions, betterments or improvements.

(6) If all of the above required payments are then current, the Issuer may use any moneys remaining in the Revenue Fund for the following purposes: (a) for prepayment of the amount, or any part thereof, of the Bonds Outstanding in accordance with the terms thereof (b) additions, betterments or improvements to the System which the Consulting Engineers certify are needed and/or (c) payments of principal and interest on subordinate water revenue bonds, or other obligations which may hereafter be issued by the Issuer on account of the System.

(B) All of the funds and accounts provided for above shall constitute trust funds and shall be used only for the purposes provided herein.

(C) The moneys in excess of the sum insured by the maximum amounts insured by the FDIC in the Revenue Fund, in the Reserve Account and in the Depreciation Account shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

(D) If on any monthly payment date the Net 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 payments dates; provided, that all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Paragraph (A), above, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority. No such deficiency shall exist solely because the required payments into the Reserve Account have not, as of such date, funded such account to the requirement therefor.

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

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

Section 4.02. Tap Fees. During the construction of the Project, Tap Fees shall be deposited in the Construction Trust Fund created in Section 5.02 hereof. Following completion of the Project, Tap Fees shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE V

APPLICATION OF BOND PROCEEDS

Section 5.01. Application of Bond Proceeds. All the moneys received from time to time from the sale of Bonds shall be deposited in the Construction Trust Fund, hereinafter created.

Section 5.02. Construction Trust Fund. There is hereby created with the Depository Bank a special fund to be known as the "Construction Trust Fund," which fund shall be kept separate and apart from all other funds of the Issuer, and shall be drawn out, used and applied by the Issuer solely for the payment of the Costs of the Project and purposes incidental thereto, including payment of any borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of Project, for the payment of interest on the Bonds during construction and for a period up to six months thereafter and for no other purposes whatsoever. The moneys in said fund shall be secured at all times by the Depository Bank, by Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. If for any reason the amounts on deposit in the Construction Trust Fund are not necessary for, or are not applied to, such purposes, then such unapplied amounts shall be deposited by the Issuer as determined by the rules and regulations of the Government. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys, until so applied, in favor of the Holders of the Bonds hereby authorized.

Expenditures or disbursements by the Depository Bank from said Construction Trust Fund shall be made only after such expenditures or disbursements shall have been approved in writing by the Governing Body, the Consulting Engineers and the Government.

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. 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 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the 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. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the Sinking Fund and the Reserve Account and all other payments provided for in this Resolution are hereby irrevocably pledged, in the manner provided herein and therein, 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 6.04. Rates. Prior to the issuance of the Bonds, 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 in the office of the Governing Body, copies of which will be open to inspection by all interested parties. The schedule of rates and charges shall be sufficient to pay the Operating Expenses of the System, to pay the principal of and interest on all Bonds issued hereunder, and to provide an adequate Reserve Account and an adequate Depreciation Fund. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates

and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable Operating Expenses of the System, and to fund any reserves required by the PSC Order or any supplement or amendment thereto, and (ii) to leave a balance each year equal to the maximum amount required in any succeeding fiscal year to pay the principal of and interest on the Bonds and to leave a balance each fiscal year equal to at least 115% of the average annual debt service on the Bonds Outstanding and all other obligations of the Issuer, secured by or payable from such revenues prior to or on a parity with the Bonds, provided that when the Reserve Fund for the Bonds is funded at the maximum level required therefor, then the balance each year must be equal to at least 110% of the amount required to pay the maximum principal and interest due on the Bonds in any ensuing year.

Section 6.05. Sale of the System. So long as the Bonds are Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of or encumbered (other than any statutory mortgage lien created under the Act on account of obligations issued within the restrictions hereof) only with the written consent of the Government, and such consent will specify the disposition of any such sale or transfer.

Section 6.06. Issuance of Additional Bonds. No Additional Bonds, as in this section defined, payable out of the revenues of the System shall be issued after the issuance of the Bonds pursuant hereto, except under the conditions and in the manner herein provided.

(A) No such Additional Bonds shall be issued without the written consent in advance of FmHA. No such Additional Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, additions, betterments and improvements to the System or refunding one or more series of Bonds issued hereunder, or both, except as provided in subsection (F) of this section.

(B) No such Additional Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written certification by an Independent Certified Public Accountant, based upon the necessary investigation, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year immediately preceding the date of the issuance of such Additional Bonds shall have been not less than one hundred fifteen percent (115%) of the average aggregate amount which will mature or become

due in any succeeding Fiscal Year for principal of and interest on the Bonds and on all Bonds of all other outstanding series on a parity with the Bonds and on the Additional Bonds then proposed to be issued. This limitation may be waived or modified by the written consent of Bondholders representing 75% of each series of the then Outstanding Bonds issued pursuant hereto.

(C) Prior to or concurrently with the issuance of any such Additional 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 Additional Bonds.

(D) The term "Additional Bonds," as used in this section, shall be deemed to mean Additional Bonds issued under the provisions and within the limitations of this section, payable from the revenues of the System on a parity with the Bonds, and all the covenants and other provisions of this Resolution (except as to details of such Additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Holders of any Additional Bonds subsequently issued within the limitations of and in compliance with this section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds, either new or created herein, required for such Additional Bonds, in addition to the payments required for the Bonds originally issued hereunder. Redemption of Bonds prior to maturity, in the event that the Bonds and Additional Bonds hereby authorized are Outstanding, shall as nearly as practical be on an equal pro rata basis reflecting the original amounts of each issue.

(E) No Additional Bonds shall be issued at any time unless all the payments into the respective funds provided for herein on Bonds then Outstanding and all other payments provided for herein shall have been made or paid up as required to the date of issuance of the Additional Bonds and the Issuer shall have fully complied with all the covenants, agreements and terms hereof or shall have remedied any deficiency in such compliance.

(F) With the written consent in advance of FmHA, and anything to the contrary in subsections (A), (B) and (C) of this section notwithstanding, Additional Bonds may be authorized and issued by the Issuer pursuant to a Supplemental Resolution in the event that the Bonds should be insufficient, together with other funds lawfully available therefor, to pay or provide for all Costs of the Project. Any such Additional Bonds authorized and issued under the provisions of this subsection shall be limited to the

aggregate principal amount required to make up any deficiency in funds for payment of such Costs, and the maturities of any such Additional Bonds shall be in years and amounts suggested by FmHA.

Section 6.07. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to FmHA, or any other original purchaser of the Bonds. Such audit report submitted to FmHA shall include a statement that the Issuer is in compliance with the terms and provisions of this Resolution.

The Issuer shall keep and preserve all financial records for a period of ten (10) years, and such material, upon request, will be made available for public inspection.

Section 6.08. Fiscal Year; Budget. While the Bonds are Outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the annual budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of such annual budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Board. Copies of each annual budget shall be delivered to FmHA by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the annual budget before the first day of any Fiscal Year, it shall adopt a budget of current expenses from month to month until the adoption of the annual budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten percent (10%); and provided further, that adoption of a budget of current expenses shall not constitute compliance with the covenant to adopt an annual budget unless the Issuer's failure to submit an annual budget shall be for a reason beyond the control of the Issuer. Each such budget of current expenses shall be delivered and mailed immediately as in the case of the annual budget.

Section 6.09. Services Rendered by the System. 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 themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. 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 6.10. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals, or other charges for the services and facilities of the System, and take

all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent, to the full extent permitted or authorized by the laws of the State and the rules and regulations of the Public Service Commission. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

To the extent allowed by law and the PSC, whenever any rates, rentals or charges for the services and facilities of the System, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent and the owner, user and property shall be held liable at law 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 the rules and regulations promulgated by the PSC, for any account not paid within sixty (60) days, discontinue and shut off the services and facilities of the System and, in the event the Issuer owns a sewer facility (the "Sewerage System"), the Sewerage System to all users of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System have been paid in full and all accrued penalties plus a reconnection charge have been paid and shall take all further actions to enforce collections to the maximum extent permitted by law. The Issuer further covenants to use its best efforts to enter into agreements with any other entities providing sewerage service to its users, providing for discontinuing and shutting off the services and facilities of the sewerage system to users of the System delinquent in payment.

Section 6.11. Insurance and Bonds. The Issuer hereby covenants and agrees that, so long as the Bonds remain Outstanding, it will, as an expense of operation and maintenance of the System, procure, carry and maintain insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured prior to acceptance of any part of the Project from the contractor, on all above-ground insurable portions of the System, including machinery and equipment housed therein, in an amount equal to the insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to,

obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than \$500,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$200,000 from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured at the commencement of construction of the Project.

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

(D) Workers' Compensation Coverage for All Employees of the System Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each contractor dealing directly with the Issuer, and such payment bonds will be filed with the Clerks of The County Commissions of Fayette, Nicholas and Clay Counties prior to commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

(E) Fidelity Bonds will be provided as to every officer and employee of the Issuer having custody of the Revenue Fund or of any other funds or valuable property of the System in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount required by FmHA and to be increased thereafter as necessary to cover the maximum amount of funds under control of that position at any one time.

(F) Flood Insurance will be obtained by the Issuer if available.

(G) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this section, during construction of the Project and so long as FmHA holds any of the Bonds, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each prime contractor to carry insurance, of such types and in such amounts

as FmHA may specify, and with insurance carriers or bonding companies acceptable to FmHA.

Section 6.12. 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 for the providing of any services which would compete with services provided by the System.

Section 6.13. Consulting Engineer. The Issuer will retain recognized, qualified independent Consulting Engineers on an annual basis to supervise generally the operation, maintenance and renewal of the System and report annually to the Issuer in writing their recommendations and comments as to the System. Such annual report of the Consulting Engineers or a summary thereof shall be made available at reasonable times to FmHA and to any Bondholder requesting the same.

Section 6.14. Contracts. Not later than simultaneously with the delivery of the Bonds, the Issuer shall have entered into written contracts for the immediate acquisition or construction of the project.

Section 6.15. Statutory Mortgage Lien. For the further protection of the Holders of Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, and shall take effect immediately upon delivery of the Bonds and shall be for the equal benefit of all Holders of each respective series of Bonds.

Section 6.16. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

Section 6.17. Covenant to Amend Resolution. The Issuer retains the right to make any amendments, insertions or deletions by Supplemental Resolutions of this Resolution as the Issuer deems desirable or necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds. The Board of the Issuer hereby retains the specific authority to amend or supplement this Resolution to comply with the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereto. In determining to amend or supplement this Resolution, the Board of the Issuer may rely on the opinion of a nationally recognized bond counsel.

The Issuer retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this

Resolution as the Issuer deems necessary prior to the issuance of the Bonds to meet the requirements of FmHA.

ARTICLE VII

DEFAULTS AND REMEDIES

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

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

(B) 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 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 Government, the Depository Bank, the Bond Registrar, any Paying Agent or a Registered Owner of a Bond; or

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

Section 7.02. Remedies. Upon the happening and continuance of any Event of Default, any 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.

Section 7.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under this Resolution and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default, with respect to the Bonds, the Registered Owner shall, in

addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project, or both, on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and any interest thereon and the deposits into the funds and accounts herein provided and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Resolution and the Act.

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

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Resolution for Reserve, Sinking 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 Event of Default, any Registered Owner of Bonds issued pursuant to this Resolution 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 Bonds issued pursuant to this Resolution. 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, and the curing and making good of any default 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, mortgage, or otherwise dispose of any assets of the System.

ARTICLE VIII

INVESTMENTS; 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 or the Depository Bank, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section.

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, including but not limited to those in the Construction Trust Fund, and used for the purpose of such fund or account. 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 Owner, including the value of accrued interest and giving effect to the amortization of discount and investments in the "consolidated fund" of the West Virginia Board of Investments shall be valued at par. The Commission or the Depository Bank, 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. Such Depository Bank may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under the section:

A. Qualified Investments acquired from the Reserve Account shall have maturities or be subject to redemption at the option of the Holder within five (5) years from the date of acquisition.

B. Qualified Investments acquired for the Depreciation Fund shall have maturities or be subject to redemption at the option of the Holder within ten (10) years from the date of acquisition.

C. Qualified Investments may be purchased for the Reserve Account either in the open market or from the Construction Trust Fund. If so purchased from the Construction Trust Fund, such Qualified Investments shall be purchased at a price equal to their original purchase price plus accrued interest.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Modification or Amendment. Except as provided in Section 6.18, 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 Owners of the Bonds shall be made without the consent in writing of the Owners of 66-2/3 percent 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 Net Revenues of the System without the consent of the respective Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds respectively, required for consent to the above-permitted amendments or modifications.

Section 9.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution, any Supplemental Resolution or the Bonds.

Section 9.03. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 9.04. Repeal of Conflicting Resolutions. All resolutions and orders, or parts thereof, in conflict with this Resolution are, to the extent of such conflict, repealed; provided, that no provision of FmHA Form 1942-47 shall be repealed hereby.

Section 9.05. Covenant of Due Procedure. 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.

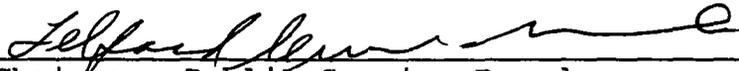
Section 9.06. Satisfaction and Discharge. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the respective pledges of Net Revenues, and other moneys and securities pledged under this Resolution, and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. Any payment must comply with the terms of the Letter of Conditions and any FmHA regulations.

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

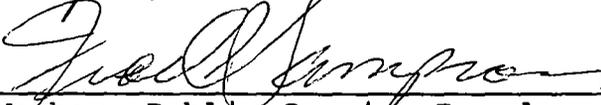
Adopted this 3rd day of February, 1994.

CLAY COUNTY PUBLIC SERVICE DISTRICT

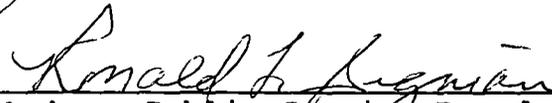
[SEAL]



Chairman, Public Service Board



Member, Public Service Board



Member, Public Service Board

ABB02DB9

CERTIFICATION

Certified as a true copy of a Resolution adopted by the Public Service Board of Clay County Public Service District on the 15th day of February, 1994.

[SEAL]


Secretary, Public Service Board

EXHIBIT A

PROJECT DESCRIPTION

The project consists of the acquisition and construction of a waterworks distribution system to be connected to the Town of Clay's system at Little Italy and Ivydale by constructing some 10,600 L.F. of 6" PVC mains, one booster station and one 100,000 gallon storage tank and constructing some 42,500 L.F. of 6" PVC mains out Route 16 from Ivydale to the Big Otter interchange of Interstate 79. Some 58 hydrants will also be installed throughout this system to provide for future fire service. The 6" PVC lines will be the minimum size considered. Refined water will be purchased from the Town of Clay to supply the demands of this new system.

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATE, INTEREST RATE, AND SALE PRICE OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 1994; DESIGNATING A REGISTRAR AND DEPOSITORY BANK; SETTING FORTH REGISTRATION INFORMATION; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Board") of the Clay County Public Service District (the "District") has duly and officially enacted a Bond Resolution, effective February 3, 1994 (the "Resolution"), entitled:

Resolution authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the existing waterworks facility of the Clay County Public Service District and the financing of the cost, not otherwise provided, thereof, through the issuance by the District of \$383,000 in aggregate principal amount of water revenue bonds and the sale thereof to the United States Department of Agriculture, Farmers Home Administration; providing for the rights and remedies of and security for the registered owners of such bonds; providing for the terms and provisions of such bonds and adopting other provisions relating thereto.

WHEREAS, the Resolution provides for the issuance of Water Revenue Bonds (the "Bonds") of the Clay County Public Service District in an aggregate principal amount not to exceed \$383,000 and the sale thereof to the United States Department of Agriculture, Farmers Home Administration (the "Farmers Home Administration"), all in accordance with Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended (the "Act"), and the Resolution, and it is provided that the interest rates and sale

price of the Bonds should be established by a supplemental resolution and that other matters relating to the Bonds be herein provided for;

WHEREAS, Farmers Home Administration proposes to purchase the Bonds;

WHEREAS, the Board of the District deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the price of and the interest rate on the Bonds be fixed hereby in the manner stated herein; and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there is hereby authorized and ordered to be issued the Clay County Public Service District Water Revenue Bonds, Series 1994 in the aggregate principal amount of \$383,000, and the sale thereof to the United States Department of Agriculture, Farmers Home Administration. The Bonds shall be in the form of one Bond, shall be dated February 15, 1994, shall mature forty years from the date thereof, shall be numbered R-1 and the principal amount advanced under the Bonds shall bear interest at the rate of five per centum (5.0%) per annum. Monthly installments of interest only on the amounts advanced under the Bonds are payable monthly, commencing the fifteenth day of the month following the month of delivery of the Bonds, for the first 24 months after delivery of the Bonds and thereafter, monthly

installments of principal and interest on the Bonds, in the aggregate amount of \$1,881, are payable on the fifteenth day of each month, except that the final installment on the Bonds shall be made 40 years from the date of the Bonds in the sum of the unpaid principal and interest remaining unpaid on the date thereof. The Bonds are subject to prepayment as set forth in the Resolution.

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

Section 3. The District hereby approves and accepts the offer of the Farmers Home Administration to purchase the Bonds. The execution and delivery by the Chairman and Secretary of the Bonds, and the performance of the obligations contained therein, on behalf of the District are hereby authorized, approved and directed. The price of the Bonds shall be Three Hundred Eighty Three Thousand Dollars (\$383,000) (100% of par value). At least Forty-Three Thousand Five Hundred Dollars (\$43,500) will be advanced on the date of Closing and the remaining purchase price will be advanced to the District as needed to pay the Costs of the Project.

Section 4. All principal and interest payments on the Bonds will be paid to the order of the United States Department of

Agriculture at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

Section 5. The Bonds shall be issued as a fully registered Bond, both as to principal and interest, and shall be registered to the United States Department of Agriculture, Farmers Home Administration, P. O. Box 678, Morgantown, West Virginia 26505.

Section 6. The District hereby appoints and designates Clay County Bank, Clay, West Virginia, as the Depository Bank, as provided in the Resolution.

Section 7. The District hereby appoints and designates Clay County Bank, Clay, West Virginia, as Registrar for the Bonds as provided in the Resolution.

Section 8. The Chairman and the Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Resolution and the Farmers Home Administration financing.

Section 9. The financing of the Project by the Bonds 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. This Supplemental Resolution shall be effective immediately upon adoption.

Dated: February 3, 1994


Chairman

[SEAL]

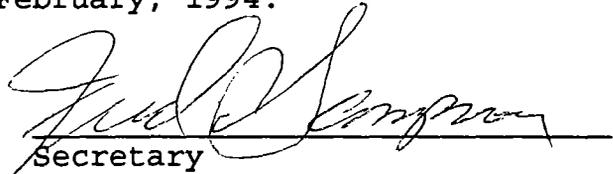

Secretary

ABH02DD1

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as Secretary of the Clay County Public Service District, Clay County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of an official record of the Clay County Public Service District, such records being in the custody of the undersigned and maintained at the offices of the Clay County Public Service District, Clay County, West Virginia, and that the action taken by the Public Service Board in the foregoing document remains in full force and effect and has not been amended or repealed.

Dated this 15th day of February, 1994.


Secretary

[SEAL]

ABB02DD1

\$333,000 CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 1994 B

BOND RESOLUTION

\$333,000 CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 1994 B

BOND RESOLUTION

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CLAY COUNTY PUBLIC SERVICE DISTRICT

BOND RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF CLAY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$333,000 IN AGGREGATE PRINCIPAL AMOUNT OF CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 1994 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY 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 CLAY COUNTY PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. 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 Bonds, 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.

"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.

"Bonds" means the Series 1994 B Bonds 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 Bonds in substantially the form set forth in the Bond Forms 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 Bonds for the proceeds representing the purchase of the Bonds 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 1994 B Bonds Construction Trust Fund established by Section 5.01.

"Consulting Engineers" means Chapman Technical Group, St. Albans, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of sewerage systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers

for the System and which engineer or engineering firm shall meet the Program requirements.

"Costs" or "Costs of the Project" or any similar phrase means those costs described in Section 1.03G 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 1994 B Bonds, 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.

"Depository Bank" means Clay County Bank, Clay, West Virginia, 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 and any successor thereto.

"EDA Grant" means the grant from the United States Economic Development Administration in the amount of \$1,330,000.

"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 Series 1994 B Bonds 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 Series 1994 B Bonds, 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 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.

"Grant Agreement" means a written commitment for the payment of the Grant or any of the Other Grants, as hereinafter defined, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is to be paid to the Issuer; provided that, "EDA Grant Agreement" means only the Grant Agreement relating to the EDA Grant.

"Grant Receipts" means all moneys received by the Issuer on account of any Grant to pay Costs of the Project; provided that "EDA Receipts" means only the EDA Grant Receipts on account of any or all of the EDA Grant.

"Grant" means the EDA Grant.

"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 Series 1994 B Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1994 B Bonds;

(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 Series 1994 B Bonds;

(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 Series 1994 B Bonds ratably as original proceeds of the Series 1994 B Bonds, 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 Series 1994 B Bonds, 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 Series 1994 B Bonds 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 Series 1994 B Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1994 B Bonds; 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" means the Clay County Public Service District, a public corporation and political subdivision of the State.

"Loan Agreement" means the Loan Agreement or Loan Agreements to be entered into between the Authority and the Issuer, pursuant to which the Authority shall agree, subject to the Issuer's satisfying certain engineering, legal and other requirements, to purchase the Series 1994 B Bonds.

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the respective Reserve Accounts. 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 Bonds, 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 Series 1994 B Bonds and is not acquired in order to carry out the governmental purpose of the Series 1994 B Bonds.

"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 Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

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

"Paying Agent" means the Commission.

"Prior Bond" means the Issuer's Water Revenue Bond, Series 1994, dated February 15, 1994, issued in the original aggregate amount of \$383,000.

"Prior Resolution" means resolution of the Issuer authorizing the Prior Bond adopted on February 3, 1994.

"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" means the Authority's loan program, under which the Authority purchases the revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of sewer development revenue bonds issued by the Authority or any successor to said program as currently constituted.

"Project" means the acquisition and construction of the sewerage system distribution facility by 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. 93-0495-PWD-CN which was entered and became the Final Order on January 19, 1994.

"Purchase Price," for the purpose of computation of the Yield of the Series 1994 B Bonds, has the same meaning as the term "Issue Price" in Sections 1273(b) and 1274 of the Code and, in general, means the initial offering price of the Series 1994 B Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1994 B Bonds of each maturity is sold or, if the Series 1994 B Bonds are privately placed, the price paid by the first buyer of the Series 1994 B Bonds or the acquisition costs of the first buyer. Purchase Price for purposes of computing Yield of Nonpurpose Investments means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1994 B Bonds for acquisition thereof or, if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 1994 B Bonds.

"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 or Federal Savings and Loan Insurance Corporation, 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 paid 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 Board of Investments pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended; and

(h) Advance-Refunded Municipal Bonds.

"Rebate Fund" means the fund created pursuant to Section 8.02 hereof.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01.

"Resolution" means this resolution, as from time to time amended or supplemented.

"Revenue Fund" means the Revenue Fund established by Section 5.01.

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

"Series 1994 B Bonds" means the not more than \$333,000 in aggregate principal amount of Clay County Public Service District Water Revenue Bonds, Series 1994 B, of the Issuer originally authorized hereby.

"Series 1994 B Bonds Reserve Account" means the Series 1994 B Bonds Reserve Account established in the Series 1994 B Bonds Sinking Fund pursuant to Section 5.02(2)(a).

"Series 1994 B Bonds Reserve Requirement" means as of any date of calculation the maximum amount of principal and interest with will become due on the Series 1994 B Bonds in the then current or any succeeding year.

"Series 1994 B Bonds Sinking Fund" means Series 1994 B Bonds Sinking Fund established by Section 5.02(2).

"State" means the State of West Virginia.

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

"System" means the complete waterworks system of the Issuer, and any further improvements or extensions thereto hereafter constructed or acquired from any sources whatsoever, and includes the Project.

"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 Series 1994 B Bonds, produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, 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 1.02. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

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

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

B. The Issuer presently owns and operates a public water distribution system. The Issuer purchases water from the Town of Clay, West Virginia, pursuant to an agreement approved by the PSC.

C. Certain areas of the Issuer are currently without public water service and it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain extensions and improvements to the System of the Issuer, consisting of the Project under 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 Prior Bond, the Series 1994 B Bonds and all sinking funds, reserve accounts and other payments provided for herein, in the Prior Resolution and in the PSC Order.

E. The estimated maximum cost of the construction and acquisition of the Project is \$1,663,000, of which approximately \$333,000 will be permanently obtained from the Bonds herein authorized and approximately \$1,330,000 will be obtained from the EDA Grant. The Issuer may obtain such other grants and contributions or from other sources as may be necessary to pay Cost of Project.

F. There are currently outstanding obligations of the Issuer which will rank on parity with the Series 1994 B Bonds as to lien, pledge, source and security for payment, being the Issuer's Water Revenue Bond, Series 1994 (the "Prior Bond") issued in the original aggregate principal amount of \$383,000. The Issuer has received the written consent of Farmers Home Administration as owner of the Prior Bond for the issuance of the Bonds.

G. It is deemed necessary for the Issuer to issue its revenue bonds, being the Clay County Public Service District Water Revenue Bonds, Series 1994 B Bonds in the aggregate principal amount of not more than \$333,000 to permanently finance the cost 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; amounts which may be deposited in the Reserve Account; interest during construction and for a period not to exceed six months thereafter; engineering and legal expenses; expenses for estimates of costs and revenues and for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, commitment fees, fees of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized 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 Bonds or the repayment of indebtedness, incurred by the Issuer for such purposes shall be deemed Costs of the Project.

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

I. It is in the best interests of the Issuer that the Series 1994 B Bonds 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 relating to authorization of the construction, acquisition and operation of the Project and issuance of the Series 1994 B Bonds, or will have so complied prior to issuance of any Series 1994 B Bonds, including, among other things, the obtaining of the PSC Order, the time for rehearing and appeal of which expired or the rights of all parties to appeal have been waived.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds 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 of such Bonds of like series.

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 construction and acquisition of the Project in accordance with the plans and specifications which have been prepared by the Consulting Engineers and heretofore filed in the office of the Governing Body. The proceeds of the Series 1994 B Bonds hereby authorize and shall be applied as provided in Article VI hereof.

The District has received acceptable bids or has entered into contracts for the acquisition and construction of the Project.

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 costs of the Project, funding a reserve account for the Series 1994 B Bonds, capitalizing interest on the Series 1994 B 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 issued negotiable bonds of the Issuer. Said Bonds shall be issued in one series, to be designated respectively "Clay County Public Service District Water Revenue Bonds, Series 1994 B," in the aggregate principal amount of not more than \$333,000, and shall have such terms as are set forth hereinafter or in the Supplemental Resolution. The proceeds of the Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in the Construction Trust Fund established by Section 5.01 hereof.

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

Unless otherwise provided by this Resolution or the Supplemental Resolution, the Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in this Resolution. The Bonds shall be exchangeable at the option and expense of the Holder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in the Supplemental Resolution and shall bear interest from such date.

Section 3.03. Additional Terms of Series 1994 B Bonds. In addition to the terms set forth in Sections 3.01 and 3.02 hereof and in anticipation of the sale of the Series 1994 B Bonds to the Authority, the Issuer covenants that the Series 1994 B Bonds shall comply in all respects with the provisions of the Loan Agreement and of any resolution of the Authority authorizing the issuance of Series 1994 B Bonds pursuant to the Program.

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 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.05. 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 3.09, 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 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and

incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds 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 Bonds or transferring the Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obligated to make any such exchange or transfer of Bonds during the period commencing on the fifteenth day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.07. 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 cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and

if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.08. 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 Holders 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. The payment of the debt service on all the Series 1994 B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on parity with the lien on the Net Revenues in favor of the holders of the Prior Bond. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 1994 B Bonds and the Prior Bond and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereinafter established and established in the Prior Resolution, are hereby irrevocably pledged to the payment of the principal of and interest on the Prior Bond and the Series 1994 B Bonds as the same become due.

Section 3.10. Form of Bonds. The text of the Series 1994 B Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Bonds]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 1994 B

No. BR-1

\$333,000

KNOW ALL MEN BY THESE PRESENTS: That CLAY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Clay 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 Three Hundred Thirty Three Thousand Dollars \$333,000 in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning April 1, 1995. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the Registered Owner hereof at the address as it appears on the books of Clay County Bank, Clay, West Virginia, as registrar (the "Registrar") on the 15th day of the month next 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 upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority dated October 21, 1994.

This Bond is one of a series of Bonds (the "Bonds") issued in the original principal amount of \$333,000 (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing waterworks system of the Issuer (the "Project"); (ii) to pay interest on the Bonds

during the construction of the Project and for not more than six months thereafter; [(iii) to fund a reserve account for the Bonds;] 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"), and a Resolution duly adopted by the Issuer on October 20, 1994, 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 IS ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT AND SECURITY FROM THE NET REVENUES (AS DEFINED IN THE RESOLUTION) WITH THE CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BOND, SERIES 1994, ISSUED FEBRUARY 15, 1994 (THE "PRIOR BOND"), AND ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$383,000.

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 lien of the Prior Bond, moneys in the Reserve Account created under the Resolution for the Bonds (the "Series 1994 B Bonds Reserve Account") and unexpended proceeds of the Bonds (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 in 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 hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1994 B Bonds 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, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Series 1994 B Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with any of the Series 1994 B Bonds, including the Prior Bond, provided however, that so long as the Series 1994 B Bonds Reserve Account is funded at an amount at least equal to the maximum amount of principal and interest which will come due on said Bonds in the then current or any succeeding year, and the reserve account for any other obligations outstanding prior to or on a parity with the Series 1994 B Bonds, including the Prior Bond, 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 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 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, CLAY COUNTY PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated October 21, 1994.

[SEAL]

Chairman

ATTEST:

Secretary

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1994 B 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 21, 1994

CLAY COUNTY BANK, as Registrar

By _____
Its Authorized Officer

EXHIBIT A

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 3.11. Sale of Bonds; Ratification and Execution of Loan Agreement with Authority. The Series 1994 B 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, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved.

Section 3.12. "Amended Schedule A". Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual Costs of the Project and sources of funds therefor.

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 (or continued if previously established by the Prior Resolution) and shall be held by the Depository Bank or Construction Trust Fund Depository Bank separate and apart from all other funds or accounts of each Depository Bank and from each other:

- (1) Revenue Fund (established by Prior Resolution);
 - (2) Renewal and Replacement Fund (established by Prior Resolution);
 - (3) Series 1994 B Bonds Construction Trust Fund;
- and
- (4) Rebate 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 1994 B Bonds Sinking Fund;
 - (a) Within the Series 1994 B Bonds Sinking Fund, the Series 1994 B Bonds 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. 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 herein provided.

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

(2) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month and simultaneously with the transfers required by Section 3.02(B) (2) of the Prior Resolution, apportion and set apart out of the Revenue Fund and remit to the Commission, without distinction or priority between the two payments, commencing 7 months prior to the first date of payment of interest on the Series 1994 B Bonds for

which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1994 B Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Series 1994 B Bonds on the next ensuing semiannual interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1994 B Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual 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 and without distinction or priority between the payments, commencing 13 months prior to the first date of payment of principal on the Series 1994 B Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1994 B Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1994 B Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1994 B Bonds Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next and simultaneously with the transfer required by Section 3.02(B)(3) of the Prior Resolution, on the first day of each month and without distinction of priority between the two payments, commencing 13 months prior to the first date of payment of principal of the Series 1994 B Bonds, if not fully funded upon issuance of the Series 1994 B Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1994 B Bonds Reserve Account, an amount equal to 1/120 of the Series 1994 B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1994 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1994 B Bonds Reserve Requirement.

(5) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full

calendar month after commencement of operation of the Project and simultaneously with the transfer required by Section 3.02(B)(4) of the Prior Resolution, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Series 1994 B Bonds Reserve Account provided that the total payment to the Renewal and Replacement Fund is not required to exceed 2 1/2% of Gross Revenues each month. 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 Series 1994 B Bonds Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 5.03(A)(4), shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 1994 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective series of Bonds as the same shall become due. Moneys in the Series 1994 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the respective series of Bonds, as the same shall come due, when other moneys in the attendant Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1994 B Bonds Sinking Fund and Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited for use in the Earnings Fund as required by Section 8.03.

Any withdrawals from the Series 1994 B Bonds Reserve Account which result in a reduction in the balance of the Series 1994 B Bonds Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments for the Prior Bonds and to the Series 1994 B Bonds Sinking Fund and the Series 1994 B Bonds Reserve Account, including deficiencies for prior payments, have been made in full.

As and when additional Bonds ranking on a parity with the Series 1994 B Bonds are issued, provision shall

be made for additional payments into the respective Sinking Fund sufficient to pay any interest on such Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate Reserve Account in an amount equal to the maximum provided and required to be paid into the concomitant Sinking Fund in any year for account of the Series 1994 B Bonds of such series, including such additional Bonds which by their terms are payable from such Sinking Fund.

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

The payments into the Sinking Funds 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.

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Sinking Funds, including the Reserve Accounts therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the respective Bonds and any Parity Bonds that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

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

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

D. 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.

E. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, that all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Paragraph (A), above, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority. No such deficiency shall exist solely because the required payments into the Reserve Accounts have not, as of such date, funded such account to the requirement therefor.

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

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

H. All Tap Fees shall be deposited by the Issuer, as received, in the Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and used for any lawful purpose of the System.

ARTICLE VI

APPLICATION OF BONDS PROCEEDS

Section 6.01. Application of Bonds Proceeds; Pledge of Unexpended Bonds Proceeds. (1) From the moneys received from the sale of the Series 1994 B Bonds, the following amounts shall be deposited as set forth below:

A. From the proceeds of the Series 1994 B Bonds, there shall be deposited in the Series 1994 B Bonds Sinking Fund, the sum, if any, set forth in the Supplemental Resolution; provided that such amount shall not exceed the amount necessary to pay interest for the construction period, plus six months.

B. From the proceeds of the Series 1994 B Bonds, there shall be deposited with the Commission in the Series 1994 B Bonds Reserve Account the sum, if any, set forth in the Supplemental Resolution for funding of the Series 1994 B Bonds Reserve Account.

C. The remaining moneys derived from the sale of the Series 1994 B Bonds shall be deposited with the Depository Bank in the Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02.

The Depository Bank shall act as a trustee and fiduciary for the Bondholders with respect to the Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Construction Trust Fund set forth in this Resolution. Moneys in the Construction Trust Fund shall be used solely to pay Costs of the Project and, until so expended, are hereby pledged as additional security for the respective series of Bonds. For purposes of this provision only, the moneys on hand in the Construction Trust Fund shall be treated as being disbursed on a proportionate basis.

Section 6.02. Disbursements from the Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Construction Trust Fund (except for the costs of issuance of the Bonds originally authorized hereby, which shall be made upon request of the Issuer), shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer 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 disbursement theretofore made;

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

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

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

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction 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.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Construction Trust Fund to the Series 1994 B Bonds Reserve Account, and when the Reserve Account is fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter apply such moneys in full, first to the next ensuing interest payments, if any, due on the Series 1994 B Bonds and thereafter to the next ensuing principal payments due thereon.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Holders of the Bonds, as hereinafter provided in this Article 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. Bonds, not to be Indebtedness of the Issuer. The Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Holder or Holders of any Bonds, shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position. The payment of the debt service of the Series 1994 B 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 parity with the lien on said Net Revenues in favor of the holders of the Prior Bond. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bond and the Bonds herein authorized and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Resolution and the Prior 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 schedule of rates and charges for the services and facilities of the System shall be as set forth, described in and ordered by the PSC Order, which schedule of rates is attached as Exhibit B hereto and incorporated herein by reference and is hereby adopted and approved as the rates of the Issuer, which rates will become effective as provided in the PSC Order.

The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay the Operating Expenses of the System and to make the prescribed

payments into the funds and accounts 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.

Section 7.05. Sale of the System. Except as otherwise required by law and as long as the Prior Bond is outstanding, 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 Outstanding, or to effectively defease this Resolution in accordance with Sections 10.01 hereof and to pay the Prior Bond in full. 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 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 Series 1994 B 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 Series 1994 B 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 Holders, or their duly authorized representatives, of sixty-six and two-thirds (66 2/3%) in amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 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 and in the Prior Resolution (so long as the Prior Bonds are Outstanding). 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 subordinate, 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 subordinate obligations shall be issued unless all payments required by the Prior Resolution and to be made into the Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

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

Section 7.07. Parity Bonds. A. 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 and in the Prior Resolution so long as the Prior Bond is outstanding.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1994 B Bonds.

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

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

- (1) The Bonds then Outstanding, including, without limitation, the Prior Bond;
- (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 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 adopted by the Issuer and approved by the PSC, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net

Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer and approved by the PSC, the period for appeal of which has expired prior to issuance of such Parity Bonds.

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

All covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1994 B Bonds and the Holders of any Parity Bonds issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their respective liens on the revenues of the System and their respective source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of another series on a parity therewith. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds 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 liens 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 Series 1994 B Bonds.

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

B. Notwithstanding the foregoing, or any provision of Section 7.06 to the contrary, additional Bonds may be issued pursuant to a Supplemental Resolution solely for the purpose of

completing the Project as described in the application to the Authority and in accordance with the plans and specifications of the Consulting Engineer, in the event that the Series 1994 B Bonds should be insufficient, together with other funds lawfully available therefore, to pay all costs of construction and acquisition of the project without regard to the restrictions set forth in this Section 7.07, if there is first obtained by the Issuer the written consent of the Authority to the issuance of bonds on a parity with the Bonds and provided further that prior to the issuance of such Parity Bonds and 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. The holders of the Prior Bond must consent to the issuance of such Parity Bonds.

Section 7.08. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

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

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this

Resolution with respect to said Bonds and the status of all said funds and accounts.

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Resolution.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file 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. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System, including any reserves required by the PSC Order or any supplement or amendment thereto and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bond; provided that, in the event that amounts equal to or in excess of the Reserve Requirement are on deposit respectively in the Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds, including the Prior Bond, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds.

Section 7.10. Operating Budget and Audit. 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 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.

Section 7.11. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the PSC and other laws of the State.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid when due, shall

become a lien on the premises served by the System. The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. 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 7.14. Insurance. The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer will 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, so long as the Authority is the Owner of the Bonds. 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 interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the Issuer shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in this Resolution and otherwise shall be placed in the Renewal and Replacement Fund and

used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Issuer shall carry such other insurance as is required by the Authority, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

Section 7.15. [Reserved]

Section 7.16. Completion, Operation and Maintenance.

The Issuer will expeditiously complete the Project in accordance with the plans and specifications prepared by the Consulting Engineers and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of the System in the manner provided in this Resolution.

Section 7.17. 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 Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds 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 Bonds.

C. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1994 B Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

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 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

E. TWO YEAR CONSTRUCTION ELECTION. The Issuer will expend the gross proceeds of the Bonds for the Project no later than the day which is two years after the date of issuance of the Bonds. The Issuer will expend the net proceeds (including, without limitation, investment proceeds earned before the close of the period involved on the investment of the proceeds of the Bonds) of the Bonds for the Project within the following periods beginning on the date of issuance of the Bonds.

Not less than 10 percent within 6 months,

Not less than 45 percent within 1 year,

Not less than 75 percent within 18 months, and

Not less than 100 percent within 2 years

(except for a reasonable retainage not exceeding 5% of the net proceeds of the Bonds which will be spent within 3 years). At least 75% of the net proceeds of the Bonds are to be used for construction expenditures with respect to property owned by the Issuer, and the Project will be owned by the Issuer.

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

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

Section 7.18. Statutory Mortgage Lien. For the further protection of the Holders of the Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, and shall take effect immediately upon delivery of the Bonds and shall be for the benefit of all Registered Owners of Bonds which lien is on a parity with the lien of the Prior Bond.

Section 7.19. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

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.

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.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once a year, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records relating thereto so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of intent on the Bonds from gross income for Federal income tax purposes.

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 1994 B 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

Series 1994 B Bonds so that the Series 1994 B 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 Series 1994 B 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. Rebate of Excess Investment Earnings to the United States. A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Resolution, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Resolution on account of the Series 1994 B Bonds, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than \$100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such last day is not a business day, or such earlier date as may be required under the Code or the Loan Agreement, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to the Construction Trust Fund until completion of the Project, and thereafter to the Revenue Fund.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 15 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 15 days following the last day of each Bond Year and within 15 days following the date of the retirement of the Series 1994 B Bonds, the Issuer shall calculate, and shall provide

written notice to the Authority and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) of the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Series 1994 B Bonds shall be determined based on the actual Yield of the Series 1994 B Bonds and during the period between the Closing Date for the Series 1994 B Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Series 1994 B Bonds, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a

reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than \$100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Series 1994 B Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep, and retain for a period of six years following the retirement of the

Series 1994 B Bonds, records of the determinations made pursuant to this Section 8.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 8.03, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further 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.

I. REPORTING TO AUTHORITY. The Issuer shall 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 relating thereto as may be requested by the Authority and shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as the Authority may request.

J. AMENDMENTS TO THIS SECTION. Notwithstanding any of the provisions herein to the contrary, the Issuer agrees to amend the provisions of this Section from time to time at the direction of the Authority in order to insure continuing compliance with Section 8.02 hereof.

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 Bond Registrar, any Paying Agent or a Holder of a Bond; or

(3) If a default occurs under the Prior Resolution; or

(4) 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 Bond.

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 Event of Default with respect to the Bonds any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project, or both, on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this 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 Bonds 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 Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, 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 Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of

both the Issuer and 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.

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 Holders of the 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 such 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 such 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 said 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 (66-2/3%) percent 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 funds herein respectively pledged therefor 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 excludability of interest on the Bonds from the gross income of the Holders 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 Bonds and no change, variation or alteration of any kind of the provisions of the Resolution shall be made in any manner, except as in this Resolution provided.

Section 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 and the Bonds.

Section 11.04. Headings, Etc.

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

Section 11.05. Conflicting Provisions Repealed; Prior Resolution.

All orders or resolutions and parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between the Resolution and the Prior Resolution, the

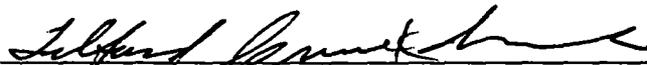
Prior Resolution shall control (unless less restrictive), so long as the Prior Bond is outstanding.

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 20th day of October, 1994.

CLAY COUNTY PUBLIC SERVICE DISTRICT



Chairman, Public Service District



Member, Public Service District



Member, Public Service District

CERTIFICATION

Certified as a true copy of a Resolution adopted by the Public Service Board of Clay County Public Service District on the 20th day of October, 1994.

Dated: October 21, 1994.

[SEAL]

William P. Dune
Secretary, Public Service District

ABB06299

EXHIBIT A

DESCRIPTION OF PROJECT

The Project consists of approximately 51,000 LF of new 6 inch PVC mains, 2 booster stations, 2 water storage tanks, one river crossing and two railway crossings, and all necessary appurtenances, to provide new water service to the Triplett Ridge, Hartland and Bickmore areas.

EXHIBIT B

SCHEDULE OF RATES

WHEREAS, Clay County
Public Service District has
requested approval of the
following rates and charges:

First 3,000 gallons per
month-\$5.25 per 1,000 gallons
Next 3,000 gallons per
month-\$5.00 per 1,000 gallons
Next 4,000 gallons per
month-\$4.75 per 1,000 gallons
Next 10,000 gallons per
month-\$4.50 per 1,000 gallons
All over 20,000 gallons per
month-\$4.25 per 1,000 gallons

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 1994 B, DESIGNATING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; APPROVING THE LOAN AGREEMENT WITH RESPECT TO THE BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board of the Clay County Public Service District (the "District") has duly and officially adopted a Bond Resolution on October 20, 1994 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF CLAY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$333,000 IN AGGREGATE PRINCIPAL AMOUNT OF CLAY COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 1994 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY RELATING TO SAID BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Resolution provides for the issuance of the Clay County Public Service District Water Revenue Bonds, (herein the "Bonds") in aggregate principal amount not to exceed \$333,000, all 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 (the "Loan Agreement") entered into between the District and the West Virginia Water Development Authority (the "Authority"), but requires that the dates, interest rates, maturities, sale prices and other terms of the Bonds should be established by a supplemental resolution;

WHEREAS, the Bonds are 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 Bonds be fixed hereby in the manner stated herein; that the Loan Agreement be approved; and that other matters relating to the Bonds be herein provided for; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CLAY COUNTY PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution, the Act, and this Supplemental Resolution, the Bonds shall be in the aggregate principal amount of \$333,000, with the following provisions:

The Series 1994 B Bonds shall be originally issued in the form of a single bond, numbered BR-1, in the principal amount of \$333,000. The Series 1994 B Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2033, shall bear interest at the rate of 6.75% per annum, payable semiannually on April 1 and October 1 of each year, first interest payable April 1, 1995, shall be subject to redemption upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1994 B Bonds, and shall be payable in installments of principal on October 1 in each of the years 1996 through 2033, inclusive, and in the amounts as set forth in "Schedule X," attached thereto and to the Loan Agreement and incorporated therein by reference. The Series 1994 B Bonds 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 Bonds shall be as provided in the Resolution, and the Bonds 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 Bonds by the Chairman shall be conclusive evidence of such approval.

Section 3. The District does hereby ratify, approve and accept the Loan Agreement including each "Schedule X" attached thereto, a copy of which is 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, approved and directed.

Section 4. The District hereby reaffirms and appoints Clay County Bank, Clay, West Virginia, as the Depository Bank, as provided in the Resolution.

Section 5. The District hereby appoints and designates Clay County Bank, Clay, West Virginia, as Registrar for the Bonds.

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 or Acting 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 Bonds hereby and by the Resolution approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreements on or about October 21, 1994. In the event Mr. William Dunn is unable to attend the closing of the Bond issue, Mr. Ronald Sigman is hereby authorized to act and sign as Acting Secretary of the District.

Section 8. Series 1994 B Bonds proceeds in the amount of \$28,097 shall be deposited in the Series 1994 B Sinking Fund, as capitalized interest.

Section 9. The financing of the Project in part with proceeds of the Bonds 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 until further directed by the District.

Section 11. The District shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the District to be used directly or indirectly in a manner which would result in the exclusion of the Bonds 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 Bonds as "private activity bonds" 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 20, 1994

CLAY COUNTY PUBLIC SERVICE DISTRICT


Chairman

[SEAL.]

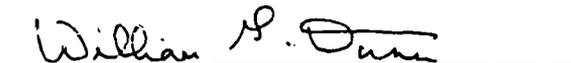

Secretary

ABB06294



United States Department of Agriculture
Rural Development
West Virginia State Office

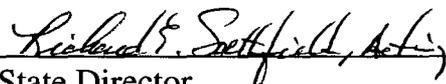
CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CONSENT TO ISSUANCE OF BONDS

The undersigned duly authorized representative of the United States of America, acting through the United States Department of Agriculture, Rural Development, Rural Utilities Service, the registered owner of the Prior Bonds, hereinafter defined and described, hereby (i) consents to the issuance of the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) (the "Series 2005 A Bonds"), in the original principal amount of \$623,000, by Clay County Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2005 A Bonds (collectively, the "Resolution"), on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1994 (the "Prior Bonds"); (ii) waives any requirements imposed by the Prior Bonds or the resolutions authorizing the Prior Bonds (collectively, the "Prior Resolutions"), regarding the issuance of parity bonds which are not met by the Series 2005 A Bonds or the Resolution; and (iii) consents to any amendments made to the Prior Resolutions by the Resolution.

WITNESS my signature on this 19th day of December, 2005.

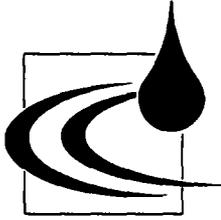
UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
AGRICULTURE,
RURAL DEVELOPMENT


State Director

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

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WEST VIRGINIA
Water Development Authority

Celebrating 31 Years of Service 1974 - 2005

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CONSENT TO ISSUANCE OF BONDS

In reliance upon a certificate of Bassett & Lowe, CPA, an independent certified public accountant, stating that the coverage and parity requirements have been met (copy attached), the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) (the "Series 2005 A Bonds"), in the original principal amount of \$623,000, by Clay County Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2005 A Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1994 B (the "Prior Bonds").

WITNESS my signature on this 19th day of December, 2005.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY


Authorized Representative

11/15/05
006676/00302

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wvwda.org

19

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.1

GENERAL CERTIFICATE ON:

1. TERMS AND AWARD OF BONDS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. SPECIMEN BOND
13. BOND PROCEEDS
14. USERS
15. GRANTS
16. CONFLICT OF INTEREST
17. PROCUREMENT OF ENGINEERING SERVICES
18. WETLANDS COVENANT
19. COUNTERPARTS

On this 19th day of December, 2005, we, the undersigned CHAIRPERSON and the undersigned SECRETARY of the Public Service Board of Clay County Public Service District (the "Issuer"), and the undersigned LOCAL COUNSEL and REAL ESTATE COUNSEL for the Issuer, hereby certify in connection with the Clay County Public Service District Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) (the "Bonds" or the "Series 2005 A Bonds"), dated the date hereof, as follows:

1. **TERMS AND AWARD OF BONDS:** The entire issue of the Bonds has been duly awarded to the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), pursuant to a letter of conditions dated March 17, 1997, and all amendments thereto (collectively, the "Letter of Conditions"), a Bond Resolution duly adopted by the Issuer on December 15, 2005, and a Supplemental Resolution duly adopted by the Issuer on December 15, 2005 (collectively, the "Resolution"). All capitalized words and terms used in this Certificate and not otherwise defined herein shall have the same meaning as set forth in the Resolution.

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for 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 Issuer or the title of the members or officers of the Issuer or the Board thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals, licenses, orders, permits, exemptions, consents, authorizations, registrations and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for construction of the Project have been solicited by the Issuer in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the acceptance and approval of the Letter of Conditions by the Issuer. The Issuer has met all conditions set forth in the Letter of Conditions and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Series 2005 A Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (1) the certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the Prior Bonds have been met; and (2) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2005 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

5. **SIGNATURES AND DELIVERY:** The undersigned Chairperson and Secretary are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Chairperson did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his or her manual signature; the undersigned

Secretary did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his or her manual signature; and the Chairperson did deliver the Bonds to a representative of the Government as the original purchaser of the Bonds.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the PSC Orders entered on October 8, 2002 and November 18, 2005, in Case No. 00-1327-PWD-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the October 8, 2002 Order has expired prior to the date hereof without any appeal having been filed. The time for appeal of the November 18, 2005 Order has not expired on the date hereof. However, the parties to such Order have stated that they do not intend to appeal such Order. The Issuer hereby certifies that it will not appeal such Order. Both Orders remain in full force and effect.

The Issuer has duly published the required notice with respect to, among other things, the amount of the Bonds to be issued, the interest rate and terms of the Bonds, the Project to be acquired or constructed, the cost of the Project, the anticipated user rates and charges and the date that a formal application for a certificate of public convenience and necessity is to be filed with the PSC in accordance with Chapter 16, Article 13A, Section 25 of the Code of West Virginia, 1931, as amended.

7. RATES: The rates of the System, as approved by the PSC Order entered on October 8, 2002, in Case No. 00-1327-PWD-CN, will become effective when the Project is substantially complete.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Clay County Public Service District." The Issuer is a public service district and a public corporation duly created by The County Commission of Clay County and presently existing under the laws of, and a political subdivision of, the State of West Virginia in Clay County of said State. The governing body of the Issuer is its Board, consisting of three duly appointed, qualified and acting members, whose names and dates of commencement and termination of their current terms are as follows:

<u>Name</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Keith King	September 1, 2000	September 1, 2006
Simpson Neal	September 1, 2005	September 1, 2011
Teddy Underwood	September 1, 2004	September 1, 2010

The duly elected or appointed officers of the Board for 2005 are as follows:

Keith King	-	Chairperson
Simpson Neal	-	Secretary
Cynthia Schoolcraft	-	Treasurer

The duly appointed and acting local counsel for the Issuer is H. Wyatt Hanna, III, of South Charleston, West Virginia. The duly appointed and acting real estate counsel for the Issuer is James W. Lane, Jr., Esquire, of Charleston, West Virginia.

9. **LAND AND RIGHTS-OF-WAY:** In the opinion of the undersigned real estate counsel, all land, rights-of-way and easements necessary for the acquisition and 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 Issuer, 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 within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds. The local counsel makes no representation regarding this paragraph.

10. **MEETINGS:** All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds, the acquisition, construction, and financing of the Project or the operation of the System were authorized or adopted at meetings of the Board duly and regularly or specifically called and held pursuant to all applicable statutes, including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, 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.

11. **INSURANCE:** The Issuer 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 Letter of Conditions. All insurance for the System required by the Resolution and the Letter of Conditions are in full force and effect.

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

13. **BOND PROCEEDS:** On the date hereof, the Issuer received the sum of \$430,206.72, from the Government, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

14. **USERS:** The Issuer will serve at least 670 bona fide users upon the completion of the Project, in full compliance with the Letter of Conditions.

15. **GRANTS:** As of the date hereof, the grant from the Government in the amount of \$3,100,000 and the grant from the West Virginia Infrastructure and Jobs Development Council in the amount of \$2,070,000 are committed for the Project and in full force and effect.

16. **CONFLICT OF INTEREST:** No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Bonds, the Resolution 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.

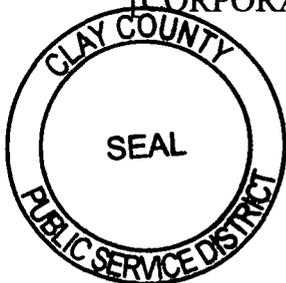
17. **PROCUREMENT OF ENGINEERING SERVICES:** The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. **WETLANDS COVENANT:** The Issuer hereby certifies that it will not use any proceeds of the Bonds for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity.

19. **COUNTERPARTS:** This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of CLAY COUNTY PUBLIC SERVICE DISTRICT as of the date first written above.

[CORPORATE SEAL]



Signature

Official Title

[Handwritten Signature]

Chairperson

[Handwritten Signature]

Secretary

[Handwritten Signature]

Local Counsel

[Handwritten Signature]

Real Estate Counsel
(regarding paragraph No. 9 only)

EXHIBIT A

Specimen Bond (see Tab No. 14)

12/14/05
006676/00302

M0435222.1

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.2

CERTIFICATE OF SECRETARY
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

On this 19th day of December, 2005, the undersigned duly appointed Secretary of Clay County Public Service District (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the Clay County Public Service District Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted or approved by the Public Service Board (the "Board") of the Issuer 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. Orders of The County Commission of Clay County Creating and Enlarging the Issuer.
2. Orders of The County Commission of Clay County Appointing the Members of the Board.
3. Oaths of Office of the Board Members.
4. Rules of Procedure.
5. Minutes of Current Year Organizational Meeting.
6. Public Service Commission Order.
7. USDA Letter of Conditions.
8. USDA Loan Resolution and Closing Letter.
9. Bond Resolution.

10. Supplemental Resolution.
11. Minutes of Board Meeting regarding Adoption of Bond Resolution and Supplemental Resolution.
12. Affidavits of Publication regarding Notice of Borrowing and Notice of Meeting to Adopt Bond Resolution and Supplemental Resolution.
13. 1994 Bond Resolution.
14. 1994 B Bond Resolution.
15. USDA Consent to Issuance of Bonds.
16. WDA Consent to Issuance of Bonds.
17. Environmental Health Services Permit.
18. USDA Grant Agreement.
19. Infrastructure Fund Grant Agreement.
20. Insurance Certificates.
21. Water Purchase Contract with Town of Clay.

WITNESS my signature and the official seal of the Issuer as of the date first written above.

CLAY COUNTY PUBLIC SERVICE DISTRICT



Secretary

[SEAL]



11/17/05
006676/00302



CLAY COUNTY PUBLIC SERVICE DISTRICT 3.3
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF CONSULTING ENGINEER

Engineers
Architects
Interior Designers
Landscape Architects

On this 19th day of December, 2005, I, Robert G. Belcher, Registered Professional Engineer, West Virginia License No. 13093, of Chapman Technical Group, St. Albans, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain improvements and extensions (the "Project") to the existing public water facilities (the "System") of Clay County Public Service District (the "Issuer"), to be constructed primarily in Clay County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Issuer on December 15, 2005 (the "Resolution"), and the Letter of Conditions dated March 17, 1997, and all amendments thereto (collectively, the "Letter of Conditions"), from the United States of America, United States Department of Agriculture, Rural Utilities Service ("the Government").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying costs of issuance and related costs.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the West Virginia Bureau for Public Health (the "BPH), and any change orders approved by the Issuer, the Government and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for

200 Sixth Avenue
St. Albans, West Virginia
25177
Telephone
(304) 727-5501
Telefax
(304) 727-5580
Website Address
www.chaptech.com



the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Letter of Conditions; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the Government and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of Bassett & Lowe, CPA, of even date herewith, as of the effective date thereof, the rates and charges for the System as approved by the Public Service Commission of West Virginia and adopted by the Issuer will be sufficient to comply with the provisions of the Resolution; and (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Government.

WITNESS my signature and seal as of the date first written above.



CHAPMAN TECHNICAL GROUP

Robert G. Belcher, P.E.
West Virginia License No. 13093

BASSETT & LOWE
CERTIFIED PUBLIC ACCOUNTANTS

1156 South Main Street
Milton, West Virginia 25541
Telephone: (304) 743-5573
Fax: (304) 743-1150 Toll Free: 1-800-720-9629
e-mail: ralphwb@charterinternet.com (Ralph W. Bassett, Jr.)
e-mail: rodlowe@charterinternet.com (Rodman G. Lowe)

December 19, 2005

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

Clay County Public Service District
Clay, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

United States Department of Agriculture,
Rural Utilities Service
Beckley, West Virginia

Ladies and Gentlemen:

I have reviewed the water rates of Clay County Public Service District (the "Issuer"), as approved by the order of the Public Service Commission of West Virginia entered October 8, 2002, in Case No. 00-1327-PWD-CN, the projected operating expenses and the anticipated customer usage provided by Chapman Technical Group, the consulting engineer of the Issuer. It is my opinion that such rates are sufficient (i) to provide for all operating expenses of the water facilities of the Issuer (the "System") and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Issuer's Water Revenue Bonds, Series 1994 and Water Revenue Bonds, Series 1994 B (collectively, the "Prior Bonds"); and Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) (the "Series 2005 A Bonds").

It is further my opinion that (i) the Net Revenues for the fiscal year following the year in which the Series 2005 A Bonds are to be issued will be at least 120% of the average annual debt service requirements on the Prior Bonds and the Series 2005 A Bonds; and (ii) the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2005 A Bonds,

Clay County Public Service District
West Virginia Water Development Authority
United States Department of Agriculture
December 19, 2005
Page 2

plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2005 A Bonds, will not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding year for principal of and interest on the Prior Bonds and the Series 2005 A Bonds.

Very truly yours,

A handwritten signature in cursive script that reads "Bassett & Lowe".

Bassett & Lowe, CPA

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

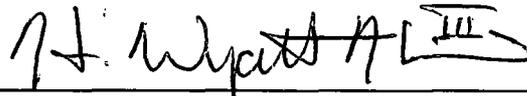
3.5

CERTIFICATE OF NO LITIGATION

On this 19th day of December, 2005, the undersigned hereby certifies that as of the date hereof, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale or delivery of the above-captioned Bonds ("the Bonds"), the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds or any proceedings of Clay County Public Service District (the "Issuer") taken with respect to the authorization, issuance, sale or delivery of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of the Net Revenues for payment of the Bonds.

All capitalized terms used herein shall have the same meaning set forth in the Bond Resolution, authorizing the Bonds, duly adopted by the Issuer on December 15, 2005.

WITNESS my signature as of the date first written above.



H. Wyatt Hanna, III, Esquire
Counsel to Clay County Public Service District

11/15/05
006676/00302

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.6

RECEIPT FOR BONDS

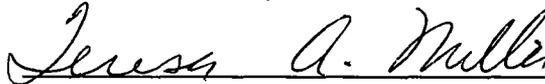
On this 19th day of December, 2005, the undersigned authorized representative of the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), for and on behalf of the Government, hereby certifies as follows:

1. On the date hereof, the undersigned received for and on behalf of the Government, the Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) (the "Bonds"), of Clay County Public Service District (the "Issuer"), dated December 19, 2005, issued in the form of one bond in the principal amount of \$623,000, and numbered AR-1. The Bonds bear interest at the rate of 4.25% per annum, payable in monthly installments on the amounts advanced thereunder, commencing 30 days following the date of delivery of the Bonds and continuing on the corresponding day of each month for the first 24 months after the date of the Bonds, and thereafter, on the corresponding day of each month in installments of principal and interest on the Bonds in the aggregate amount of \$2,760, except that the final installment on the Bonds shall be paid at the end of 40 years from the date of the Bonds in the sum of the unpaid principal and interest due on the date thereof. The Bonds represent the entire principal amount of the above-captioned bond issue.

2. At the time of such receipt of the Bonds, they had been executed by the Chairperson of the Issuer and attested by the Secretary of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature as of the date first written above.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
AGRICULTURE, RURAL UTILITIES SERVICE



Authorized Representative

11/15/05
006676/00302

M0435230.1

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

3.7

RECEIPT FOR BOND PROCEEDS

On this 19th day of December, 2005, the undersigned Chairperson of Clay County Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received on the date hereof from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), the sum of \$430,206.72, being the first advance on the Clay County Public Service District Water Revenue Bonds, Series 2005 A (United States Department of Agriculture) (the "Bonds"). The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer by the Government from time to time as construction progresses.

WITNESS my signature as of the date first written above.

CLAY COUNTY PUBLIC SERVICE DISTRICT


Chairperson

12/14/05
006676/00302

CLAY COUNTY PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2005 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

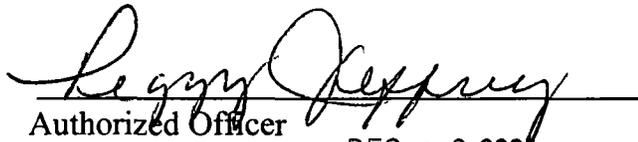
3.8

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

CLAY COUNTY BANK, Clay, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution and a Supplemental Resolution adopted by Clay County Public Service District (the "Issuer") on December 15, 2005 (collectively, the "Resolution"), authorizing the issuance of the Issuer's Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), in the principal amount of \$623,000, dated December 19, 2005, and agrees to serve as Depository Bank, all as set forth in the Resolution.

WITNESS my signature on this 19th day of December, 2005.

CLAY COUNTY BANK


Authorized Officer
DEC 0 2 2005

11/15/05
006676/00302

M0435233.1

WEST VIRGINIA MUNICIPAL BOND COMMISSION

3.9

Suite 500

NEW ISSUE REPORT FORM

8 Capitol Street, Charleston, WV 25301

Date of Report: December 19, 2005

(304) 558-3971

ISSUE: Clay County Public Service District Water Revenue Bonds, Series 2005 A
(United States Department of Agriculture)

ADDRESS: P.O. Box 130, Clay, WV 25043 COUNTY: Clay

PURPOSE OF ISSUE: New Money X
Refunding Refunds issue(s) dated:

ISSUE DATE: December 19, 2005 CLOSING DATE: December 19, 2005

ISSUE AMOUNT: \$623,000 RATE: 4.25%

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: N/A

1st DEBT SERVICE AMOUNT: N/A PAYING AGENT: None (District pays USDA directly)

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL:
Contact Person: Samme L. Gee, Esquire Contact Person:
Phone: (304) 340-1318 Phone:

CLOSING BANK: Clay County Bank ESCROW TRUSTEE:
Contact Person: Greg Gency Contact Person:
Phone: (304) 587-4221 Phone:

KNOWLEDGEABLE ISSUER CONTACT: OTHER: USDA, Rural Utilities Service
Contact Person: Cynthia Schoolcraft Contact Person: Teresa Miller
Position: Manager Function: Rural Development Specialist
Phone: (304) 587-7579 Phone: (304) 252-8644, ext. 163

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

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

NOTES: The Bond Commission will only hold the Series 2005 A Bonds Reserve Account to be funded over 10 years. Debt service payments will be made directly by the District to the National Finance Office.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required:
Transfers Required:

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA 25301-2616
TELEPHONE 304-558-2981

PERMIT

PROJECT: (Water) Phase I Water Project **PERMIT NO.:** 15,924
LOCATION: Tuckers Bottom, Oakton, Fola, Holcomb Hill, Independence, Lizemores **COUNTY:** Clay **DATE:** 1-30-2004

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Clay County Public Service District
Post Office Box 130
Clay, West Virginia 25043**

is hereby granted approval to: amend and modify Permit No. 13,600, issued March 17, 1998, Permit No. 14,436, issued April 6, 2000 and Permit No. 15,170, issued March 5, 2002, for the Phase I Water Project. This permit will be extended to January 30, 2006.

NOTE: This permit is contingent upon all unchanged conditions and requirements of Permit Nos. 13,600, 14,436 and 15,170 remaining in effect.

The Environmental Engineering Division of the St. Albans District Office (304-722-0611) is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR


William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:sec

pc: Chapman Technical Group
James W. Ellars, P.E., PSC-Engineering Division
Amy Swann, PSC
Katy Mallory, WVUJDC
Clay County Health Department
OEHS-EED St. Albans District Office

WATER OR WASTE SYSTEM GRANT AGREEMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

THIS AGREEMENT dated July 20, 2005 between

Clay County Public Service District

a public corporation organized and operating under

Chapter 16, Article 13A

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under jurisdiction at an estimated cost of \$ 5,793,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 2,693,000 of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 2,693,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 3,100,000 or 53.51% percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act the purpose only of defraying a part not to exceed 53.51% percent of the development costs, as defined by applicable Rural Utilities Service Instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, ~~whether for one or more classes~~ as approved by the West Virginia Public Service Commission.

~~of service adopted by resolution dated xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

All real property associated with the construction of the PSD's water line extension project that will serve approximately 260 new customers in the Tucker's Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence areas of Clay County.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds, for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment (use continuation sheets as necessary).

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/97]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$3,100,000.00. which it will advance to Grantee to meet not to exceed 53.51% percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Chairman

and attested and its corporate seal affixed by its duly authorized

Secretary

Attest:

Clay County Public Service District

By:

[Handwritten Signature]

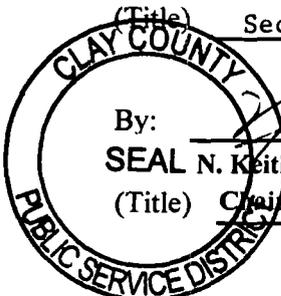
(Title) Secretary

By:

[Handwritten Signature]

SEAL N. Keith King

(Title) Chairman



UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By:

[Handwritten Signature]

TERESA A. MILLER

Rural Development Specialist

(Title)



IC-2
(7/30/01)

GRANT AGREEMENT

This Grant Agreement entered into by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and CLAY COUNTY PUBLIC SERVICE DISTRICT (the "Governmental Agency").

RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$2,070,000 (the "Grant") for the purposes of the design, acquisition or construction of a project for which a preliminary application has been submitted and approved by the Council;

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

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

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

TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.

2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority.

3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.

4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.

5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

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

7. The Governmental Agency shall list the Grant provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

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

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

CLAY COUNTY PUBLIC SERVICE DISTRICT

By: *[Signature]*
Its: Chairperson
Date: 12/15/05



(SEAL)

Attest:
[Signature]
Its: Secretary

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Its: Director
Date: _____

(SEAL)

Attest:

Its: Secretary-Treasurer

11/02/05
017542/00301

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

CLAY COUNTY PUBLIC
SERVICE DISTRICT

By: _____
Its: Chairperson
Date: _____

(SEAL)

Attest:

Its: Secretary

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: *Janis B. Gubash*
Its: Director
Date: December 19, 2005

(SEAL)

Attest:

Barbara B Meadows
Its: Secretary-Treasurer

Exhibit A

Project Description

The Project consists of a water line extension to serve Tuckers Bottom, Fola, Upper Bickmore, Indore, Lizemore and Independence, West Virginia, together with all appurtenant facilities.

ACORD INSURANCE BINDER

OP ID AB

DATE
10/13/05

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER PHONE (A/C, No, Ext): 304-345-8000 304-345-8014 Commercial Insurance Services 340 MacCorkle Ave. Ste #200 Charleston WV 25314 Janet L. Buckley, AAI, CPIW	COMPANY BINDER # 2646 Axis Specialty Insurance Co. <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">EFFECTIVE</th> <th colspan="2">EXPIRATION</th> </tr> <tr> <th>DATE</th> <th>TIME</th> <th>DATE</th> <th>TIME</th> </tr> <tr> <td>10/14/05</td> <td>12:01</td> <td>02/11/06</td> <td></td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/> AM</td> <td></td> <td><input checked="" type="checkbox"/> 12:01 AM</td> </tr> <tr> <td></td> <td><input type="checkbox"/> PM</td> <td></td> <td><input type="checkbox"/> NOON</td> </tr> </table> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: TBD	EFFECTIVE		EXPIRATION		DATE	TIME	DATE	TIME	10/14/05	12:01	02/11/06			<input checked="" type="checkbox"/> AM		<input checked="" type="checkbox"/> 12:01 AM		<input type="checkbox"/> PM		<input type="checkbox"/> NOON
EFFECTIVE		EXPIRATION																			
DATE	TIME	DATE	TIME																		
10/14/05	12:01	02/11/06																			
	<input checked="" type="checkbox"/> AM		<input checked="" type="checkbox"/> 12:01 AM																		
	<input type="checkbox"/> PM		<input type="checkbox"/> NOON																		
AGENCY CUSTOMER ID: CLAYC-1 INSURED Clay Co. Public Svc District P. O. Box 130 Clay WV 25043	DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (including Location) Location: 0 Building: 0																				

COVERAGES

LIMITS

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPEC <input checked="" type="checkbox"/> Inland Marine - EDP <input checked="" type="checkbox"/> Boiler & Machinery	Blanket Buildings	5,000	100	876,147
	Blanket Contents	5,000	100	Included
	Equipment & Media	1,000	100	6,240
	Equipment Breakdown	5,000	100	Included
GENERAL LIABILITY				
<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE \$
<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				FIRE DAMAGE (Any one fire) \$
				MED EXP (Any one person) \$
				PERSONAL & ADV INJURY \$
				GENERAL AGGREGATE \$
				PRDDUCTS - COMP/OP AGG \$
	RETRO DATE FOR CLAIMS MADE:			
AUTOMOBILE LIABILITY				
<input type="checkbox"/> ANY AUTO				COMBINED SINGLE LIMIT \$
<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person) \$
<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE \$
<input type="checkbox"/> NON-OWNED AUTOS				MEDICAL PAYMENTS \$
				PERSONAL INJURY PROT \$
				UNINSURED MOTORIST \$
				\$
AUTO PHYSICAL DAMAGE DEDUCTIBLE	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES			
<input type="checkbox"/> COLLISION:				ACTUAL CASH VALUE
<input type="checkbox"/> OTHER THAN COL:				STATED AMOUNT \$
				OTHER
GARAGE LIABILITY				
<input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
				OTHER THAN AUTO ONLY:
				EACH ACCIDENT \$
				AGGREGATE \$
EXCESS LIABILITY				
<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE \$
<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE \$
	RETRO DATE FOR CLAIMS MADE:			SELF-INSURED RETENTION \$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				
				WC STATUTORY LIMITS
				E.L. EACH ACCIDENT \$
				E.L. DISEASE - EA EMPLOYEE \$
				E.L. DISEASE - POLICY LIMIT \$
SPECIAL CONDITIONS/ OTHER COVERAGES				
				FEES \$
				TAXES \$
				ESTIMATED TOTAL PREMIUM \$

NAME & ADDRESS

	<input type="checkbox"/> MORTGAGEE <input type="checkbox"/> LOSS PAYEE	ADDITIONAL INSURED LOAN #
AUTHORIZED REPRESENTATIVE 		
32		

ACORD INSURANCE BINDER

OP ID AH

DATE
10/13/05

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER PHONE (A/C, No, Ext): 304-345-8000 304-345-8014 Commercial Insurance Services 340 MacCorkle Ave. Ste #200 Charleston WV 25314 Janet L. Buckley, AAI, CPIW		COMPANY Clarendon Insurance Group BINDER # 2645	
AGENCY CUSTOMER ID: CLAYC-1 INSURED Clay Co. Public Svc District P. O. Box 130 Clay WV 25043		DATE EFFECTIVE 10/14/05 12:01 TIME <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM EXPIRATION DATE 02/11/06 TIME <input checked="" type="checkbox"/> 12:01 AM <input type="checkbox"/> NOON	
CODE: SUB CODE:		<input checked="" type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: APR 12-00159-04	
		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)	

COVERAGES

LIMITS

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG		\$1,000,000 \$500,000 \$5,000 \$1,000,000 \$2,000,000 \$2,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE MEDICAL PAYMENTS PERSONAL INJURY PROT UNINSURED MOTORIST		\$ \$ \$ \$ \$ \$
AUTO PHYSICAL DAMAGE DEDUCTIBLE <input type="checkbox"/> COLLISION: _____ <input type="checkbox"/> OTHER THAN COL: _____	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES	ACTUAL CASH VALUE STATED AMOUNT OTHER		\$ \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EACH ACCIDENT AGGREGATE		\$ \$ \$ \$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE AGGREGATE SELF-INSURED RETENTION		\$ \$ \$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		<input checked="" type="checkbox"/> WC STATUTORY LIMITS E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT		\$1,000,000 \$1,000,000 \$1,000,000
SPECIAL CONDITIONS/ OTHER COVERAGES		FEES TAXES ESTIMATED TOTAL PREMIUM		\$ \$ \$

NAME & ADDRESS

	<input type="checkbox"/> MORTGAGEE <input type="checkbox"/> LOSS PAYEE	<input type="checkbox"/> ADDITIONAL INSURED
	LOAN #	
	AUTHORIZED REPRESENTATIVE 	

ACORD. INSURANCE BINDER

OP ID AE

DATE

10/13/05

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER PHONE (A/C, No, Ext): 304-345-8000 304-345-8014 Commercial Insurance Services 340 MacCorkle Ave. Sta #200 Charleston WV 25314 Janet L. Buckley, AAI, CPIW		COMPANY Clarendon Insurance Group BINDER # 2642	
CODE: AGENCY CUSTOMER ID: CLAYC-1 INSURED Clay Co. Public Svc District P. O. Box 130 Clay WV 25043		EFFECTIVE DATE: 10/14/05 TIME: 12:01 EXPIRATION DATE: 02/11/06 TIME: NOON X THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: APR 11-00159-04	
DESCRIPTION OF OPERATIONS/VEHICLE/PROPERTY (Including Location)		SUB CODE:	

COVERAGES

LIMITS

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR	RETRO DATE FOR CLAIMS MADE:			EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$5,000 PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$1,000,000 Underinsured Mot \$1,000,000
AUTO PHYSICAL DAMAGE DEDUCTIBLE <input checked="" type="checkbox"/> COLLISION: 500 <input checked="" type="checkbox"/> OTHER THAN COL: 500	<input type="checkbox"/> ALL VEHICLES <input checked="" type="checkbox"/> SCHEDULED VEHICLES			ACTUAL CASH VALUE STATED AMOUNT \$ OTHER
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:			EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ WC STATUTORY LIMITS
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
SPECIAL CONDITIONS/ OTHER COVERAGES				FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$

NAME & ADDRESS

	<input type="checkbox"/> MORTGAGEE <input type="checkbox"/> LOSS PAYEE	<input type="checkbox"/> ADDITIONAL INSURED
	LOAN #	
	AUTHORIZED REPRESENTATIVE 	

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID AB
CLAYC-1

DATE (MM/DD/YYYY)
10/13/05

PRODUCER
Commercial Insurance Services
340 MacCorkle Ave, Ste #200
Charleston WV 25314
Phone: 304-345-8000 Fax: 304-345-8014

INSURED
Clay Co. Public Svc District
P. O. Box 130
Clay WV 25043

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Clarendon Insurance Group	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$								
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	APR 11-00159-05	10/14/05	10/14/06	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE - EA EMPLOYEE	\$													
E.L. DISEASE - POLICY LIMIT	\$													
		OTHER												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Certificate Holder is loss payee as respects 2003 Chevy Silverado S#1GCHK24U73E203836 valued \$24,809 subject to \$500 comprehensive and collision deductibles.

CERTIFICATE HOLDER

BANKGAS

Bank of Gassaway
P. O. Box 40
Gassaway WV 26624

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Handwritten Signature]

WATER PURCHASE AGREEMENT

This contract for the sale and purchase of water is entered into as of the 9TH day of SEPT., 1993, between THE TOWN OF CLAY, A MUNICIPAL CORPORATION, hereinafter referred to as the "Seller", and THE CLAY COUNTY PUBLIC SERVICE DISTRICT (IVYDALE-BIG OTTER) hereinafter referred to as the "Purchaser";

W I T N E S S E T H :

Whereas, the Purchaser is organized and established under the provisions of Chapter 16, Article 13A of the Code of West Virginia, for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the Office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water, and

Whereas, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system now on file in the Office of the Purchaser, and

Whereas, by authority of the Town Council of the Town of Clay duly decided in a regular meeting, the sale of water to the Purchaser in accordance with the provisions herein was approved, and the execution of this contract carrying out the said conditions by the Mayor of the Town of Clay, its duly authorized officer, was entered into the minutes and made a part of the official records of said Town, and

Whereas, by resolution of the Board of Directors of the Purchaser, the purchase of water from the Seller in accordance with the terms set forth in said Water Purchase Contract was approved, and the execution of this contract by the Chairman of the Clay County Public Service District, was duly authorized;

Now, therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The Seller Agrees:

33

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the West Virginia Department of Health in such quantity as may be required by the Purchaser.



2. (Point of Delivery and Pressure) That water will be furnished at a reasonably constant pressure as required by law from an existing six inch main supply at the Clay Water Plant. If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

3. (Billing Procedure) To furnish the Purchaser at the above address not later than the 2nd day of each month, with an itemized statement of the amount of water furnished the Purchaser during the preceding month. However, the collection and billing of the individual customers will be the responsibility of the Purchaser.

B. The Purchaser Agrees:

1. (Rates and Payment Date) To pay the Seller, not later than the 12th day of each month, for water delivered in accordance with the following schedule of rates; \$1.50 per 1,000 gallons. This rate shall be applicable for a period of one year from the date on which the Seller begins to furnish the Purchaser with water on a regular basis.

2. (Connection Fee) To pay as an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the actual cost of which shall cover any and all costs of the Seller for installation of the metering equipment.

3. To be responsible for normal maintenance, meter reading and any booster station maintenance that may be required by the customers of the Purchaser. Any outlay of funds for maintenance and repair in excess of \$500.00 must be approved by the Purchaser at a regularly called business meeting as provided by the Purchaser's rules and regulations.

4. To furnish, install and operate as agreed to hereunder, the necessary metering equipment and required

devices of standard type for properly measuring the quantity of water delivered to the Purchaser.

5. To be responsible for the collection and billing of the usage of water by the individual customers and if required to make an accounting of said collection and billing procedures to the Seller.

6. To be responsible for the replacement of any existing line with 6" line so that the delivery of water needed by the Purchaser may be delivered at required pressure by the Seller.

C. It is further mutually agreed between the Seller and the Purchaser as follows:

1. (Term of Contract) That this contract shall extend for a term of forty years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser, and, thereafter may be renewed or extended for such term, as may be agreed upon by the Seller and Purchaser.

2. (Delivery of Water) That thirty days prior to the estimated date of completion of construction of the Purchaser water supply distribution system, the Purchaser will notify the Seller in writing the date of the initial delivery of water.

3. (Water for Testing) When requested by the Purchaser the Seller will make available to the contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the Purchaser during construction at the rate set forth in Section B above.

4. (Failure to Deliver) That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser consumers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

5. (Modification of Contract) The provisions of this contract, including those provisions pertaining to the schedule of rates, may only be modified by mutual agreement of the parties to this contract. Any increase or decrease in rates shall be based on a demonstrable

increase or decrease in the costs of the Seller's performance hereunder, but such costs shall not include increased capitalization of the Seller's system. Any modification made to this contract must be in writing, signed by both parties and filed for approval with the Public Service Commission of West Virginia.

6. (Regulatory Agencies) That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

7. (Miscellaneous) That the construction of the water supply distribution system by the Purchaser is being financed by a loan made or insured by, and/or a grant from, the United States Department of agriculture, and the provisions thereon pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.

B. A. That in addition to the provisions of Paragraph B (6) hereinabove, the Clay County Public Service District agrees to be responsible for the laying of approximately 4,110 linear feet of 8" P.V.C. water line and necessary appurtenances, said line beginning near the vicinity of the water treatment plant for said Town of Clay and extending along State Route 16 to a point near Clay Junction.

B. That the Town of Clay agrees to convey and does convey its interest in the water distribution system including, but not limited to, lines, rights of way, customers and necessary appurtenances, said interest to be conveyed beginning at the Municipal boundary of the Town of Clay on West Virginia Routes 4 and 16 at Two Run and extending thereto to near the vicinity of the Community of Ivydale, being approximately 9 miles in length and approximately 105 customers. The Clay Public Service District agrees to place a master meter structure and necessary measuring devices and appurtenances at the border of the Town of Clay and the Clay Public Service District's access district so that the measurement of water used may be accurately determined.

C. If the provisions of Paragraph 8 necessitate any additional telemetering controls and instruments, said controls and instrument shall be located at the treatment plant for the Town of Clay.

9. (Successor to the Purchaser) That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the

Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

10. The Purchaser agrees to give the Seller reasonable notice as to when it will fill its water storage tank and the parties also further agree to work closely as to when the Purchaser system will begin operation.

11 (Termination of Contract) Notwithstanding the 40-year term of this contract, the contract may be terminated for good cause at any time by either party giving the other party two years prior written notice of intent to terminate; however, approval for said termination must be filed for and approved by the Public Service Commission of West Virginia. Said two (2) year termination time frame shall begin when all approval has been received.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in five counterparts, each of which shall constitute an original.

Seller:
THE TOWN OF CLAY
BY [Signature]
ITS MAYOR

Purchaser:
CLAY COUNTY PUBLIC
SERVICE DISTRICT
BY [Signature]
ITS CHAIRMAN

This contract is approved on behalf of the Farmers Home Administration this 10th day of Jan 1994.

By [Signature]
Title _____

CLOSING MEMORANDUM

3.15

To: Cynthia Schoolcraft
Teresa Miller
Janna Lowery
Samme Gee

From: Francesca Tan

Date: December 19, 2005

Re: Clay County Public Service District Water Revenue Bonds,
Series 2005 A (United States Department of Agriculture)

1. DISBURSEMENTS TO DISTRICT

A. Payor: United States Department of Agriculture
Source: Series 2005 A Bonds Proceeds
Amount: \$430,206.72
Date: December 19, 2005
Form: Electronic Funds Transfer
Payee: Clay County Public Service District
Bank: Clay County Bank
Routing No.: 051502641
Account No.: 163341
Account: Series 2005 A Bonds Construction Trust Fund

12/14/05
006676/00302

December 19, 2005

Clay County Public Service District
Clay, West Virginia

United States Department of Agriculture,
Rural Utilities Service
Beckley, West Virginia

Re: Clay County Public Service District Water Revenue Bonds,
Series 2005 A (United States Department of Agriculture)

Ladies and Gentlemen:

We have served as bond counsel to Clay County Public Service District (the “Issuer”) in connection with the issuance of its Water Revenue Bonds, Series 2005 A (United States Department of Agriculture), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the issuance of the Bonds. The Bonds are issued in the principal amount of \$623,000, in the form of one bond and bear interest from the date hereof, on the amount advanced thereunder, at the rate of 4.25% per annum.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the “Act”), and have been authorized by a Bond Resolution duly adopted by the Issuer on December 15, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 15, 2005 (collectively, the “Resolution”). The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the “Project”); and (ii) paying certain costs of issuance and related costs. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution when used herein.

M0435236.1

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to ensure the validity of the results.

3. The third part of the document describes the different types of data that are collected and analyzed. It includes information on both quantitative and qualitative data, as well as the various sources from which the data is obtained.

4. The fourth part of the document discusses the various statistical methods and techniques used to analyze the data. It covers topics such as hypothesis testing, regression analysis, and correlation analysis, among others.

5. The fifth part of the document discusses the various ways in which the results of the analysis can be presented and communicated. It includes information on the use of tables, graphs, and charts, as well as the importance of clear and concise communication.

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

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Resolution and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Resolution.

4. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

Clay County Public Service District
United States Department of Agriculture
December 19, 2005
Page 3

We have examined the executed Bond numbered AR-1 and in our opinion, the form of said Bond and its execution are regular and proper.

Very truly yours,

A handwritten signature in black ink, appearing to read "Josh Kelly" followed by a stylized flourish or initials.

11/15/05
006676/00302

M0435236.1

H. Wyatt Hanna, III
ATTORNEY AT LAW

512 D STREET • P.O. BOX 8070 • SOUTH CHARLESTON, WEST VIRGINIA 25303
(304) 744-3150 • FAX (304) 744-3157

December 19, 2005

Clay County Public Service District
Clay, West Virginia

United States Department of Agriculture,
Rural Utilities Service
Beckley, West Virginia

Jackson Kelly PLLC
Charleston, West Virginia

RE: Clay County Public Service District
Water Revenue Bonds
Series 2005 A
(United States Department of Agriculture)

Ladies and Gentlemen:

I am counsel to Clay County Public Service District, a public service district, in Clay County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above captioned bonds of the Issuer (the "Bonds"), the letter of conditions dated March 17, 1997, and all amendments thereto, from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), a Bond Resolution duly adopted by the Public Service Board of the Issuer (the "Board") on December 15, 2005, as supplemented by a Supplemental Resolution duly adopted on December 15, 2005 (collectively, the "Resolution"), orders of The County Commission of Clay County, West Virginia, relating to the Issuer and the appointment of members of the Board, and other documents relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution when used herein.

I am of the opinion that:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to adopt the Resolution, all under the Act and other applicable provisions of law.

2. The members and officers of the Board have been duly and properly appointed and elected, have taken the requisite oaths, and are thereby authorized to act on behalf of the Issuer in their respective capacities.

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

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

5. The Issuer has received all permits, licenses, approvals, consents, certificates, orders, exemptions, registrations and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, all requisite permits, approvals, orders, and certificates from the County Commission of Clay County, the West Virginia Bureau for Public Health and the West Virginia Infrastructure and Jobs Development Council. The Issuer has taken all actions required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received the Orders of the Public Service Commission of West Virginia (the "PSC") entered on October 8, 2002, and November 18, 2005, in Case No. 00-1327-PWD-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the October 8, 2002, Order has expired prior to the date hereof without any appeal having been filed. The time for appeal of the November 18, 2005, Order has not expired on the date hereof. However, the parties to such Order have stated that they do not intend to appeal such Order. Both Orders remain in full force and effect.

6. The Issuer has duly published the required notice with respect to, among other things, the amount of the Bonds to be issued, the interest rate and terms of the Bonds, the Project to be acquired or constructed, the cost of the Project, the anticipated user rates and charges and the date that a formal application for a certificate of public convenience and necessity was filed with the PSC in accordance with Chapter 16, Article 13A, Section 25 of the Code of West Virginia, 1931, as amended, and has duly complied with the provisions thereof.

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

8. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act and the Resolution; and, (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Sincerely,

A handwritten signature in black ink, appearing to read "H. Wyatt Hanna, III". The signature is written in a cursive style with a large, stylized "H" and "A". To the right of the signature is a rectangular stamp or mark containing the Roman numeral "III".

H. Wyatt Hanna, III

HWHIII/rb

Law Offices of
James W. Lane, Jr.
Woolworth Building
205 Capitol Street, Suite 400
P. O. Box 11806
Charleston, WV 25339
(304) 342-0081 Facsimile (304) 343-3365

December 19, 2005

Clay County Public Service District
Clay, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Jackson Kelly PLLC
Charleston, West Virginia

Re: Final Title Opinion for Clay County Public Service District

Ladies and Gentlemen:

I am the real estate counsel to Clay County Public Service District (the "Issuer") in connection with a proposed project to acquire and construct certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council for the Project. Please be advised of the following:

1. The Issuer is a duly created and validly existing public service district possessed with all the powers and authority granted to public service districts under the laws of the State of West Virginia to acquire, construct, operate and maintain the Project as approved by the West Virginia Bureau for Public Health.

2. The Issuer has obtained all necessary permits and approvals for the

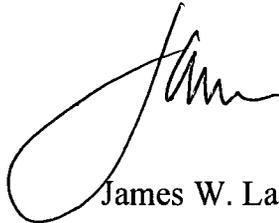
construction of the Project.

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Chapman Technical Group, the consulting engineers for the Project.

4. I have examined the records on file in the Office of the Clerk of The County Commission of Clay County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project, subject to the discussion regarding certain of the sites attached as Exhibit A..

5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of The County Commission of Clay County to protect the legal title to and interest of the Issuer.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Lane, Jr.", written in a cursive style.

James W. Lane, Jr.

EXHIBIT A

FOLA TANK SITE & ACCESS

District has title based upon recently recorded deed from Willard and Sarah Lane

District needs a Release from Citifinancial, Inc. which has a deed of trust on the Lane property. The Release has been furnished to Citifinancial, and the release should be forthcoming. If Citifinancial declines to sign the release, the interest of Citifinancial may be obtained by condemnation proceeding. The undersigned real estate acquisition attorney will continue to monitor the status, and obtain the release. The absence of the release will not affect at all the District's immediate right to begin construction.

INDEPENDENCE TANK & ACCESS

The District needs to acquire a deed and access easement from George E. Ward and Dorothea Ward. The District has negotiated an agreement with James Ward, son and power of attorney for the owners. The Deed has been prepared and should be executed within a few days. Pending the execution of the deed, James Ward, power of attorney for the owners, has executed a license providing the District with the immediate right to begin construction of the project.

HOLCOMB HILL BOOSTER

District needs Releases from certain entities which have liens on the property. The Releases have been furnished to the creditors, and the releases should be forthcoming. If the creditors decline to sign the releases, the interests may be obtained by condemnation proceeding. The undersigned real estate acquisition attorney will continue to monitor the status, and obtain the releases. The absence of the releases will not affect at all the District's immediate right to begin construction.

FOLA BOOSTER

The District needs a deed from Joey Jeffrey (by his power of attorney Ardith Jeffrey) and from Ardith Jeffrey. The owner has been contacted and appears to be willing to convey the property. A deed has been mailed to her for execution. The undersigned real estate acquisition attorney will continue to monitor the progress and if the deed is not obtained in the immediate future, condemnation proceedings will be commenced.

FINAL TITLE OPINION

LOAN APPLICANT Clay County Public Service District	ADDRESS OR PROPERTY COVERED BY THIS OPINION Water System-See Schedule A	
APPLICANT FOR TITLE EXAMINATION	COUNTY Clay	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to December, 19, at 10:00 a.m. (including the time of filing the current security instrument).
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in Clay County Public Service District
as titleholder
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid 3rd Statutory lien on said property as required by Rural
(Priority) *(Mortgage, etc.)*
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on N/A,
(Date)
, at a.m. and is recorded in N/A
(Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

12/14/05
(Date)

J. Am
(Attorney's signature)

20 Box 11806
Charleston, WV 25339
(Address, include ZIP Code)

Attachments

EXHIBIT A

CLAY COUNTY PSD

WATER LINE EXTENSION PROJECT

A. EXISTING STATUTORY LIENS

1. Water Revenue Bonds, Series 1994, dated February 15, 1994, issued in the principal amount of \$383,000.
2. Water Revenue Bonds, Series 1994 B, dated October 21, 1994, issued in the principal amount of \$333,000.

B. TANK and BOOSTER SITES FOR PROJECT

The following is a list of all fee simple properties necessary for construction of the District's water line extension project, together with status of District's title.

FOLA TANK SITE & ACCESS

District has title based upon recently recorded deed from Willard and Sarah Lane
District needs a Release from Citifinancial, Inc. which has a deed of trust on the Lane property. The Release has been furnished to Citifinancial, and the release should be forthcoming. If Citifinancial declines to sign the release, the interest of Citifinancial may be obtained by condemnation proceeding. The undersigned real estate acquisition attorney will continue to monitor the status, and obtain the release. The absence of the release will not affect at all the District's immediate right to begin construction.

INDEPENDENCE TANK & ACCESS

The District needs to acquire a deed and access easement from George E. Ward and Dorothea Ward. The District has negotiated an agreement with James Ward, son and power of attorney for the owners. The Deed has been prepared and should be executed within a few days. Pending the execution of the deed, James Ward, power of attorney for the owners, has executed a license providing the District with the immediate right to begin construction of the

project.

The District has obtained a recorded waterline easement and access easement from Oscar and Janene Sizemore to access the tank site.

HOLCOMB HILL BOOSTER

District has title based upon a recently recorded deed from Michael Ramsey and also a deed from Shirley J. Reedy.

District needs Releases from CAMC, WV Dept. of Tax, and Tammy Ramsey which have liens on the Ramsey property. The Releases have been furnished to the creditors, and the releases should be forthcoming. If the creditors decline to sign the releases, the interests may be obtained by condemnation proceeding. The undersigned real estate acquisition attorney will continue to monitor the status, and obtain the releases. The absence of the releases will not affect at all the District's immediate right to begin construction.

HOLCOMB HILL TANK & ACCESS

District has title to the tank and access easement based upon recently recorded deeds from Vernal and Gearold Taylor and from William Edward Graham, Jr.

FOLA BOOSTER

The District needs a deed from Joey Jeffrey (by his power of attorney Ardith Jeffrey) and from Ardith Jeffrey. The owner has been contacted and appears to be willing to convey the property. A deed has been mailed to her for execution. The undersigned real estate acquisition attorney will continue to monitor the progress and if the deed is not obtained in the immediate future, condemnation proceedings will be commenced.

INDEPENDENCE BOOSTER

The District has title to the property by a recently recorded deed from Benjamin G. and Nina F. Murphy.

C. EXISTING UTILITY SITES

The following is a list of all fee simple properties on which the District's presently existing water utility is located, together with a status of District's title.

HEARTLAND TANK

Randy Holcomb owns the property upon which the tank and part

of the access and water line exists. The District is and has been in negotiations with Mr. Holcomb for a deed to the property. The Clay County Bank has a deed of trust lien against the property. The undersigned real estate acquisition attorney will monitor the progress of the acquisition of the tank site and will ensure that the same is obtained by the District free of liens, by voluntary agreement or by condemnation in the immediate future.

The District has acquired an Access Easement & Waterline Easement by recorded deed and easement from the Exlines.

The District has acquired an Access Easement & Waterline by recorded deed from the Marlings.

The District needs an Access Easement from the Houses. The District has been unsuccessful in obtain this access easement and a condemnation petition is likely. The District should make a final effort at this, and the undersigned attorney is willing to try to assist with this, or initiate a condemnation petition.

IVYDALE TANK

The District needs to acquire the tank site and easement from John Joseph Ward and Ruth Morris Ward. Negotiations are ongoing. The undersigned real estate acquisition attorney will continue to monitor this situation and if the District does not obtain the property in the immediate future, the District can obtain the property by condemnation.

IVYDALE BOOSTER

The booster is located on DOH right of way. The District has good title to this property by virtue of a permit from the Department of Transportation, Division of Highways.

TRIPLETT RIDGE BOOSTER

District has title based upon a recorded deed from Paul B. Barringer, II, et al.

OPINION OF COUNSEL RELATIVE TO RIGHTS-OF-WAY

Date December 19, 2005

Dear Sir:

I have reviewed the action taken by Clay County Public Service District (hereinafter called the "Corporation") in obtaining a right-of-way for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from Rural Development to the Corporation. I have examined the right-of-way instruments, permits, or licenses obtained from landowners, public bodies, and public utilities and made such searches of the public records necessary to determine the legal sufficiency of the instruments covered by the "Right-of-way Certificate," executed by the Corporation on December 19, 19 2005. I also have examined the "Right-of-way Map" to determine whether continuous and adequate land and rights-of-way are owned or have been acquired by the instruments covered in the "Right-of-way Certificate."

Based on the foregoing examination, and to the best of my knowledge, information, and belief, I am of the opinion that:

- A. The legal instruments by which the Corporation has acquired said rights-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation, and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) have each been properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases, or subordinations from lienholders recommended by me or required by Rural Development have been obtained.
- B. The legal instruments referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation, and maintenance of the Corporation's facilities except as below noted.
- C. Exceptions:
 - 1. Title examinations for properties covered 20 year period.

Very truly yours,



Attorney for Clay County PSD

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, S.W., Washington, D.C. 20250-7602. Please DO NOT RETURN this form to this address. Forward to the local USDA office only. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.