

unable to obtain public utility services. To further this effort, and to insure 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.

Acts 1953, c. 147; Acts 1980, c. 60; Acts 1986, c. 81.

**Cross References**

County courts, authority to make grants for water and sewer systems, see § 7-1-3t.

**Administrative Code References**

Sewer utilities regulations, see W. Va. Code St. R. § 150-5-1 et seq.

**Library References**

Counties ⇨18.  
 Municipal Corporations ⇨5, 6.  
 Public Utilities ⇨145.  
 Westlaw Topic Nos. 104, 268, 317A.

C.J.S. Counties § 31.  
 C.J.S. Municipal Corporations § 11.  
 C.J.S. Public Utilities §§ 26 to 32, 159 to 167,  
 169 to 171, 177 to 178.

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**Validity 1**

**1. Validity**

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying water and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6,

§ 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 123(3); Statutes ⇨ 123(5)

Statute authorizing creation of public service districts violates no provision of State Constitution, nor is it violative of Fourteenth Amendment to United States Constitution. Act 1953, c. 147; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4056; Municipal Corporations ⇨ 4

In statute authorizing creation of public service districts, provision for delinquent fixed rates and charges for services rendered to be lien on premises served was not unconstitutional as depriving owners of property without due process of law or as violating Fourteenth Amendment of United States Constitution or applicable provisions of State Constitution. Acts 1953, c. 147, § 1 et seq.; Const. art. 3, §§ 9, 10; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4416; Municipal Corporations ⇨ 408(1)

Statute authorizing creation of public service districts does not, in so far as it requires County Court to define territory to be included in public service district and appoint a board to govern same in first instance, involve unconstitutional delegation of judicial functions to the County Court, Acts 1953, c. 147; Const. art. 8, § 24. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 2355; Municipal Corporations ⇨ 4

## 2. In general

A public service district may be created for the purpose of furnishing water or sewer services, or both water and sewer services. Code, 16-13A-1. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⇨ 5

Creation and operation of water or sanitary districts or authorities by issuance of revenue bonds payable from revenues are authorized. Code, 16-13A-1 et seq. State ex rel. Appalachian Power Co. v. Gainer, 1965, 143 S.E.2d 351, 149 W.Va. 740. Health ⇨ 369; Waters And Water Courses ⇨ 183.5

A county court may use Federal Revenue Sharing Funds for ordinary and necessary maintenance and operating expenses for sewage disposal, sanitation, and pollution abatement, and ordinary and necessary capital expenditures authorized by law but may not use such funds for matching purposes under any other federal-aid program. 55 W.Va. Op. Atty. Gen. 116 (June 27, 1973) 1973 WL 159152.

## 3. Construction and application

A public service district is a public corporation and does not come within constitutional

provision which in substance provides that all corporations shall be created by general laws and which is applicable to private corporations. Acts 1953, c. 147, § 1 et seq.; Const. art. 11, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 80(3)

## 4. Eminent domain powers

Where notice, hearing and order with respect to creation of public service district considered only the question of furnishing water, such district was created only for the purposes of furnishing water services, and had no power to condemn real estate for sewerage facilities. Code, 16-13A-1, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Eminent Domain ⇨ 32

Condemnation by public service district is not a taking of private property for private use in violation of applicable constitutional provision. Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Eminent Domain ⇨ 13

## 5. Property of public service district

Property of public service district is public property used for public purposes, and, under constitutional provision that public property shall be exempt from taxation, statute authorizing creation of public service districts and granting tax exemption was not violative of constitutional provision requiring that taxation be equal and uniform throughout state. Acts 1953, c. 147, § 1 et seq.; Const. art. 10, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Taxation ⇨ 2289

## 6. Rates and charges for service

Relief under Federal Securities Act of 1933 was not adequate or sufficient remedy for relief sought by corporations holding sewer revenue bonds of public service district in mandamus proceeding to compel district to establish and collect rates for services rendered by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariff reflecting such charges with Public Service Commission, and any relief afforded under provisions of federal statute could not supersede relief which could be granted in mandamus proceeding. Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; Code, 16-13A-1 et seq. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 3(8)

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered by district sufficient to provide for all operation-

## § 16-13A-1

## Note 6

al and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

It was ministerial duty of chairman of public service board of public service district to sign revenue bonds and to assist in effectuating their issuance, and in view of constitutionality of statute authorizing creation of the public service board, relator's showing of legal right to require performance of such duty, was sufficient and writ of mandamus would issue. Acts 1953, c. 147. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Mandamus ⇨ 103

## 7. Creation and enforcement of liens

Public service district's failure to docket notice of lien prior to date purchaser recorded deed of trust prevented district from enforcing sewer lien against purchaser. Code, 16-13A-9, 38-10C-1. McClung Investments, Inc. v. Green Valley Community Public Service Dist., 1997, 485 S.E.2d 434, 199 W.Va. 490. Municipal Corporations ⇨ 712(7)

Public service district liens must be docketed to be enforceable against purchaser of property for valuable consideration, without notice. Code, 16-13A-9, 38-10C-1. McClung Investments, Inc. v. Green Valley Community Public Service Dist., 1997, 485 S.E.2d 434, 199 W.Va. 490. Gas ⇨ 14.6; Municipal Corporations ⇨ 712(7); Waters And Water Courses ⇨ 203(14)

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ⇨ 222; Municipal Corporations ⇨ 225(1)

## 8. Admissibility of evidence

Extrinsic evidence relating to background and negotiations with regard to forming a public service district were not admissible in regard to construction of a contract for furnishing of water, where contract language was clear and unambiguous that district was to furnish water as customer should require. Berkeley County Public Service Dist. v. Vitro Corp. of America, 1968, 162 S.E.2d 189, 152 W.Va. 252. Evidence ⇨ 448

## 9. Costs

Costs of proceeding whereby constitutionality of statute authorizing creation of public service districts was tested would not be taxed against defendant who was chairman of public service board and who, honestly and in good faith, though mistakenly, endeavored to perform his duty in refusing to sign revenue bonds, and each litigant would pay his own costs. Acts 1953, c. 147. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Mandamus ⇨ 190

## § 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 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.

Acts 1986, c. 81.

## Library References

Public Utilities ⇨ 145.

Westlaw Topic No. 317A.

C.J.S. Public Utilities §§ 26 to 32, 159 to 167,  
169 to 171, 177 to 178.

## Notes of Decisions

## In general 1

1995, 464 S.E.2d 777, 195 W.Va. 135. Public Utilities ⇨ 123

## 1. In general

Statute clearly and unambiguously gives Public Service Commission (PSC) power to reduce or increase utility rates whenever it finds that existing rate is unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provision of legislation governing Commission. Code, 24-1-1 et seq., 24-2-3. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist.,

Legislature sought to establish in Public Service Commission (PSC) governmental entity which would protect public from unfair rates and practices by public utilities and also ensure that public utilities are given competitive return for their stockholders. Code, 24-2-3. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Public Utilities ⇨ 123; Public Utilities ⇨ 129

**§ 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.

Acts 1986, c. 81; Acts 1994, c. 61.

## Cross References

Public Service Commission, participation in studies, see § 24-1-1b.

## Library References

Counties ⇐18, 47.  
Westlaw Topic No. 104.  
C.J.S. Counties §§ 31, 70 to 73.

**§ 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, enforce-

ment 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.

Acts 1986, c. 81; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

#### Library References

Counties ☞18.	C.J.S. Counties § 31.
Gas ☞12.	C.J.S. Gas §§ 43 to 45.
Municipal Corporations ☞5, 6.	C.J.S. Municipal Corporations § 11.
Waters and Water Courses ☞183.5.	C.J.S. Waters §§ 483, 543 to 581.
Westlaw Topic Nos. 104, 190, 268, 405.	

### § 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, 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 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, 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.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1967, c. 105; Acts 1975, c. 140; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1995, c. 125, eff. 90 days after March 11, 1995; Acts 2002, c. 272, eff. 90 days after March 9, 2002; Acts 2005, c. 195, eff. 90 days after April 9, 2005.

**Library References**

Counties Ⓒ47.  
Municipal Corporations Ⓒ6.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 70 to 73.  
C.J.S. Municipal Corporations § 11.

**Notes of Decisions**

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ter and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6, § 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes Ⓒ 123(3); Statutes Ⓒ 123(5).

**1. Validity**

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying wa-

Statute authorizing creation of public service districts does not, in so far as it requires County Court to define territory to be included in public service district and appoint a board to govern same in first instance, involve unconstitutional delegation of judicial functions to the County Court, Acts 1953, c. 147; Const. art. 8, § 24.

State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 2355; Municipal Corporations ⇨ 4

## 2. Creation of public service districts

Where notice, hearing and order with respect to creation of public service district considered only the question of furnishing water, such district was created only for the purposes of furnishing water services, and had no power to condemn real estate for sewerage facilities. Code, 16-13A-1, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Eminent Domain ⇨ 32

Where public service district was created for purpose of furnishing water services, county court had authority to add sewerage services to the facilities of the district under appropriate proceedings. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⇨ 270

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ⇨ 222; Municipal Corporations ⇨ 225(1)

## 3. District boundaries

Public service district statute that allowed county commission to designate district's boundaries did not also empower commission to make service territories exclusive, displacing Public Service Commission's (PSC) authority to determine service rights. Code, 16-13A-2. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Counties ⇨ 47

## 4. Notice of hearing

Provisions of statute, with respect to creation of public service districts, which relate to the filing of the petition or motion of the county court, the description of the territory to be embraced, and like provisions are mandatory; but, despite use of the word "shall," the require-

ments for posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⇨ 12(3); Municipal Corporations ⇨ 12(6)

Though record with respect to creation of public service district was silent with respect to posting of notice of hearing and as to whether hearing was not more than 40 nor less than 20 days after his fixing the date for hearing as provided by statute, there was substantial compliance with statute where hearing was set some time prior to the date of the hearing, there was publication of notice more than ten days prior to the date of the hearing as required, and there were no objections either before, during or after the hearing to the creation of the district or to the procedures employed in its creation. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⇨ 12(6)

## 5. Number of voters within district

Public service district was not void because there were not 100 legal voters owning property within the district. Code, 16-13A-2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⇨ 6

## 6. Costs

Costs of proceeding whereby constitutionality of statute authorizing creation of public service districts was tested would not be taxed against defendant who was chairman of public service board and who, honestly and in good faith, though mistakenly, endeavored to perform his duty in refusing to sign revenue bonds, and each litigant would pay his own costs. Acts 1953, c. 147. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Mandamus ⇨ 190

## 7. Referendum

A public service district, once created by county court, not subject to referendum on issue to continue or be abolished. 52 W.Va. Op. Atty. Gen. 33 (August 11, 1966) 1966 WL 87428.

## § 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 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 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.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1971, c. 72; Acts 1981, c. 124; Acts 1983, c. 166; Acts 1986, c. 81; Acts 1994, c. 61; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Law Review and Journal Commentaries**

The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ? John W. Fisher, II, 98 W. Va. L. Rev. 449 (1996).  
 "Yes, West Virginia, there is a special priority for the purchase money mortgage." The recog-

inition of purchase money mortgage priority in West Virginia. Abraham M. Ashton, 107 W. Va. L. Rev. 525 (2005).

**Library References**

Counties ⇨18.  
 Municipal Corporations ⇨6.  
 Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 31.  
 C.J.S. Municipal Corporations § 11.

**Notes of Decisions**

In general 1  
 Criminal responsibility of members 5  
 Ministerial officers, generally 3  
 Removal of members 4  
 Sale of water 6  
 Standard of care 2

Tort Claims Act 7

**1. In general**

Board members of the Mt. Zion Public Service District cannot be compensated for performing the duties of treasurer and/or secretary

for the Mt. Zion Public Service District; furthermore, a board member may not be compensated for reading meters for the Mt. Zion Public Service District. 63 W.Va. Op.Atty.Gen. 2 (July 14, 1988) 1988 WL 483329.

## 2. Standard of care

Public service district owes duty of reasonable care to avoid damage to property of others with respect to maintenance of water lines. *McCloud v. Salt Rock Water Public Service Dist.*, 2000, 533 S.E.2d 679, 207 W.Va. 453. *Waters And Water Courses* ⇨ 205

## 3. Ministerial officers, generally

Public policy of West Virginia, as evidenced by statute making it unlawful for county or district board member or officer to be or become pecuniarily interested in proceeds of any contract or service over which he might have any voice, influence, or control, is not directed against actual fraud or collusion but is for purpose of preventing those acts and eliminating any opportunity therefor, and purpose of statute is to protect public funds and give official recognition to fact that person cannot properly represent public in transacting business with himself. Code, 61-10-15. *State v. Neary*, 1987, 365 S.E.2d 395, 179 W.Va. 115. *Courts* ⇨ 55; *Judges* ⇨ 21

## 4. Removal of members

Public Service District board member can be removed by majority vote of registered voters. 51 W.Va. Op.Atty.Gen. 564 (November 10, 1965) 1965 WL 92492.

## 5. Criminal responsibility of members

County commissioner's conviction for being or becoming pecuniarily interested in contract over which he might have some voice or influence was supported by evidence of his continued performance of contract maintenance work for public service district after his election to commission. Code, 61-10-15. *State v. Neary*, 1987, 365 S.E.2d 395, 179 W.Va. 115. *Counties* ⇨ 60

## 6. Sale of water

Public Service Districts may sell, at wholesale, bulk water to other municipal corporations. 51 W.Va. Op.Atty.Gen. 739 (March 16, 1966) 1966 WL 87469.

## 7. Tort Claims Act

Tort Claims Act's protection extended to public service districts, under the Act's definition of political subdivision, which included the term "public service districts," despite general authorization for public service districts to "sue and be sued," in the Public Health statutes. *Zirkle v. Elkins Road Public Service Dist.*, 2007, 655 S.E.2d 155. *Waters And Water Courses* ⇨ 183.5

## § 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.

Acts 1963, c. 75; Acts 1971, c. 72; Acts 1981, c. 124; Acts 1986, c. 81.

Counties ⇨45.  
 Public Utilities ⇨145.  
 Westlaw Topic Nos. 104, 317A.

**Library References**

C.J.S. Counties § 67.  
 C.J.S. Public Utilities §§ 26 to 32, 159 to 167,  
 169 to 171, 177 to 178.

**Notes of Decisions**

**Criminal responsibility of members** 1  
**Ministerial officers, generally** 2  
**Sufficiency of evidence** 3

is to protect public funds and give official recognition to fact that person cannot properly represent public in transacting business with himself. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Courts ⇨ 55; Judges ⇨ 21

**1. Criminal responsibility of members**

Upon becoming member of county commission, person who is pecuniarily interested in proceeds of any contract or service with public service district violates criminal conflict of interest statute; by virtue of that position, that person has some voice, influence, or control over continuation of contract. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Counties ⇨ 60

**3. Sufficiency of evidence**

County commissioner's conviction for being or becoming pecuniarily interested in contract over which he might have some voice or influence was supported by evidence of his continued performance of contract maintenance work for public service district after his election to commission. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Counties ⇨ 60

**2. Ministerial officers, generally**

Public policy of West Virginia, as evidenced by statute making it unlawful for county or district board member or officer to be or become pecuniarily interested in proceeds of any contract or service over which he might have any voice, influence, or control, is not directed against actual fraud or collusion but is for purpose of preventing those acts and eliminating any opportunity therefor, and purpose of statute

Conflict of interest indictment against county commissioner was sufficient even though it did not characterize commissioner's interest as pecuniary, and commissioner was not entitled to bill of particulars. Code, 61-10-15. State v. Neary, 1987, 365 S.E.2d 395, 179 W.Va. 115. Counties ⇨ 60

**§ 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, 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.

Acts 1953, c. 147; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2000, c. 199, eff. 90 days after March 11, 2000; Acts 2005, c. 196, eff. 90 days after April 8, 2005.

**Library References**

Counties Ⓒ68, 87.  
Municipal Corporations Ⓒ161.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 107 to 118, 128.  
C.J.S. Municipal Corporations §§ 372 to 390.

**Notes of Decisions**

In general 1

**1. In general**

Board members of the Mt. Zion Public Service District cannot be compensated for per-

forming the duties of treasurer and/or secretary for the Mt. Zion Public Service District; furthermore, a board member may not be compensated for reading meters for the Mt. Zion Public Service District. 63 W.Va. Op.Atty.Gen. 2 (July 14, 1988) 1988 WL 483329.

**§ 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.

Acts 1953, c. 147; Acts 1981, c. 124; Acts 1986, c. 81; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

#### Library References

Counties ⇨65, 68.

Municipal Corporations ⇨149, 161.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 101 to 103, 107 to 118.

C.J.S. Municipal Corporations §§ 361 to 366,

368, 372 to 390.

### § 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.

Acts 1953, c. 147; Acts 1981, c. 124.

#### Library References

Counties ⇨65, 68, 87.

Municipal Corporations ⇨149, 161, 170.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 101 to 103, 107 to 118,  
128.

C.J.S. Municipal Corporations §§ 361 to 366,

368, 372 to 405.

### § 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, chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two 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.

Acts 1953, c. 147; Acts 1967, c. 105; Acts 1981, c. 124; Acts 1982, c. 24; Acts 1986, c. 81; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Library References**

Counties ⇨107.  
 Municipal Corporations ⇨711.  
 Public Utilities ⇨114.  
 Westlaw Topic Nos. 104, 268, 317A.

C.J.S. Counties § 147.  
 C.J.S. Municipal Corporations § 1535.  
 C.J.S. Public Utilities §§ 5 to 9, 202 to 207.

**§ 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.

Acts 1953, c. 147; Acts 1980, c. 60; Acts 1981, c. 124; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

#### Library References

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|-----------------------------------|--|
| Counties Ⓒ103, 104.               | C.J.S. Counties §§ 143 to 144, 147.          |
| Eminent Domain Ⓒ6, 16.            | C.J.S. Municipal Corporations §§ 873 to 880. |
| Municipal Corporations Ⓒ221, 224. | C.J.S. Property § 17.                        |
| Westlaw Topic Nos. 104, 148, 268. |  |

#### Notes of Decisions

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- Connections with sewers or drains 6
- Eminent domain powers 3
- Environmental assessment 5
- Public corporation 7
- Validity 1

#### Valuation of property 4

##### 1. Validity

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying wa-

Note 1

ter and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6, § 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 123(3); Statutes ⇨ 123(5)

Property of public service district is public property used for public purposes, and, under constitutional provision that public property shall be exempt from taxation, statute authorizing creation of public service districts and granting tax exemption was not violative of constitutional provision requiring that taxation be equal and uniform throughout state. Acts 1953, c. 147, § 1 et seq.; Const. art. 10, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Taxation ⇨ 2289

**2. In general**

Statute providing that private property may be taken or damaged for a number of specified purposes amounts to legislative declaration of public purposes within meaning of laws, and it is a judicial question whether such declaration is consonant with organic law. Acts 1949, c. 59; Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 2510

**3. Eminent domain powers**

Although construction of new facility proposed by utility will often require taking of private property through eminent domain, absent express statutory language Public Service Commission (PSC) has no duty to review and decide issues that are inherent in eminent domain proceeding. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Public Utilities ⇨ 114

Statute providing that private property may be taken or damaged for a number of specified purposes is consonant with organic law and is constitutional. Acts 1949, c. 59; Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Eminent Domain ⇨ 3

**4. Valuation of property**

Although landowner is competent to give estimate of value of property in eminent domain proceeding, that valuation is not conclusive; government agency may rely on appraisal report concerning estimated value of property to

be taken. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Evidence ⇨ 568(4)

**5. Environmental assessment**

Whether construction of sewage lagoons would constitute "nuisance" does not defeat Public Service Commission's (PSC) jurisdiction to issue certificate of public convenience and necessity; while PSC may assess environmental considerations, chief inquiry by PSC is need of public for project. Code, 24-2-11. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Municipal Corporations ⇨ 708

**6. Connections with sewers or drains**

City, rather than sewer and water districts, was entitled to provide sewer and water services to newly developed tract that was within districts' boundaries, but was annexed to city, where such services were not previously furnished to tract. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1); Waters And Water Courses ⇨ 201

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 to extend water and/or sewer service which were not being previously furnished to the tract by the public service district, and under those circumstances, a public service district would need the consent of the municipality and the Public Service Commission (PSC) in order to provide such service. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇨ 712(1); Waters And Water Courses ⇨ 201; Waters And Water Courses ⇨ 202

**7. Public corporation**

A public service district is a public corporation and does not come within constitutional provision which in substance provides that all corporations shall be created by general laws and which is applicable to private corporations. Acts 1953, c. 147, § 1 et seq.; Const. art. 11, § 1. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ⇨ 80(3)

**§ 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 laws, 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 bonds 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; 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. 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, 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, 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 municipi-

pal 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, 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, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1989, c. 174; Acts 1994, c. 61; Acts 2002, c. 272, eff. 90 days after March 9, 2002; Acts 2003, c. 183, eff. 90 days after March 8, 2003.

**Law Review and Journal Commentaries**

The Scope of Title Examination in West Virginia: Can Reasonable Minds Differ? John W. Fisher, II, 98 W. Va. L. Rev. 449 (1996).

"Yes, West Virginia, there is a special priority for the purchase money mortgage." The recog-

inition of purchase money mortgage priority in West Virginia. Abraham M. Ashton, 107 W. Va. L. Rev. 525 (2005).

**Library References**

Gas ⇌14.6.  
Municipal Corporations ⇌712.  
Waters and Water Courses ⇌203.  
Westlaw Topic Nos. 190, 268, 405.

C.J.S. Gas §§ 64, 84 to 85.  
C.J.S. Municipal Corporations § 1535.  
C.J.S. Waters §§ 483, 666 to 732.

**Notes of Decisions**

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applicable provisions of State Constitution. Acts 1953, c. 147, § 1 et seq.; Const. art. 3, §§ 9, 10; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇌ 4416; Municipal Corporations ⇌ 408(1)

**1. Validity**

In statute authorizing creation of public service districts, provision for delinquent fixed rates and charges for services rendered to be lien on premises served was not unconstitutional as depriving owners of property without due process of law or as violating Fourteenth Amendment of United States Constitution or

**2. Takings**

Public service district's requiring property owner to connect onto its sewer system and to abandon private sewer system located on property was not a taking of private property without just compensation. Const. Art. 3, § 9; Code, 16-13A-9; U.S.C.A. Const.Amend. 5. Kingmill Valley Public Service Dist. v. River-

view Estates Mobile Home Park, Inc., 1989, 386 S.E.2d 483, 182 W.Va. 116. Eminent Domain ⇨ 2.18

Statute providing that private property may be taken or damaged for a number of specified purposes amounts to legislative declaration of public purposes within meaning of laws, and it is a judicial question whether such declaration is consonant with organic law. Acts 1949, c. 59; Const. art. 3, § 9. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 2510

### 3. Public service district liens

Public service district liens must be docketed to be enforceable against purchaser of property for valuable consideration, without notice. Code, 16-13A-9, 38-10C-1. McClung Investments, Inc. v. Green Valley Community Public Service Dist., 1997, 485 S.E.2d 434, 199 W.Va. 490. Gas ⇨ 14.6; Municipal Corporations ⇨ 712(7); Waters And Water Courses ⇨ 203(14)

Public service district's failure to docket notice of lien prior to date purchaser recorded deed of trust prevented district from enforcing sewer lien against purchaser. Code, 16-13A-9, 38-10C-1. McClung Investments, Inc. v. Green Valley Community Public Service Dist., 1997, 485 S.E.2d 434, 199 W.Va. 490. Municipal Corporations ⇨ 712(7)

If owner, tenant or occupant of garage apartment did not receive notice that public service district's sewer facilities were available for apartment, district would have been without statutory authority to impose charges and a lien against apartment for sewer services, though the apartment was on a lot containing another dwelling which was properly subject to sewer service charges. Code, 16-13A-9, 16-13A-21. Rhodes v. Malden Public Service Dist., 1983, 301 S.E.2d 601, 171 W.Va. 645. Municipal Corporations ⇨ 712(7)

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal

Corporations ⇨ 222; Municipal Corporations ⇨ 225(1)

### 4. Rates and charges for service

Statute clearly and unambiguously gives Public Service Commission (PSC) power to reduce or increase utility rates whenever it finds that existing rate is unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provision of legislation governing Commission. Code, 24-1-1 et seq., 24-2-3. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Public Utilities ⇨ 123

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

Duty imposed on public service district, a public corporation and political subdivision of state, to establish rates and charges sufficient to pay cost of maintenance, operation and depreciation of properties of district and principal of and interest on all bonds issued by district is nondiscretionary duty which may be enforced by mandamus. Code, 16-13A-9. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 80

### 5. Notice of availability of sewer service

Issue of fact as to whether owner or tenant had received notice that public service district's sewer services were available for garage apartment, so as to allow imposition of sewer service charges and a lien against apartment, was not appropriate for resolution in mandamus proceeding. Code, 16-13A-9, 16-13A-21. Rhodes v. Malden Public Service Dist., 1983, 301 S.E.2d 601, 171 W.Va. 645. Mandamus ⇨ 174

## § 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 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.

Acts 1982, c. 74.

**Library References**

Gas ⇨14.6.  
Municipal Corporations ⇨712.  
Waters and Water Courses ⇨203.  
Westlaw Topic Nos. 190, 268, 405.

C.J.S. Gas §§ 64, 84 to 85.  
C.J.S. Municipal Corporations § 1535.  
C.J.S. Waters §§ 483, 666 to 732.

**§ 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.

Acts 1953, c. 147; Acts 1981, c. 124.

**Library References**

Counties ⇨154.5.  
Municipal Corporations ⇨879.  
Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1621 to 1622.

**Notes of Decisions**

**In general 1**

**1. In general**

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered

by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

**§ 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, 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.

Acts 1953, c. 147; Acts 1981, c. 124; Acts 1986, c. 81.

#### Library References

Counties ☞154.5.	C.J.S. Municipal Corporations §§ 1621 to
Municipal Corporations ☞879.	1622.
Westlaw Topic Nos. 104, 268.	

### § 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.

Acts 1953, c. 147; Acts 1981, c. 124.

#### Library References

Counties ☞158.	C.J.S. Counties § 198.
Municipal Corporations ☞883.	C.J.S. Municipal Corporations §§ 1626, 1635.
Westlaw Topic Nos. 104, 268.	

## § 16-13A-13. Revenue bonds

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

Acts 1953, c. 147; Acts 1970, c. 11; Acts 1970, c. 12; Acts 1970, 1st Ex. Sess., c. 2; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1989, c. 174.

**Library References**

Counties ⇨174.

Municipal Corporations ⇨911.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 218.

C.J.S. Municipal Corporations §§ 1647 to 1649.

## Notes of Decisions

## In general 1

## 1. In general

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such

charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

Two acts amending same Code section in same manner except as to maximum interest rate of bonds, enacted on same date at same legislative session, and impossible to determine which passed after the other, that having lower maximum interest rate will govern. 53 W.Va. Op.Atty.Gen. 418 (April 8, 1970) 1970 WL 116579.

## § 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.

Acts 1953, c. 147; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

## Library References

Counties ⇨ 154.5.

Municipal Corporations ⇨ 879.

Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1621 to 1622.

## § 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.

Acts 1953, c. 147.

**Library References**

Counties ⇨183.

Municipal Corporations ⇨950(15).

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 222.

C.J.S. Municipal Corporations §§ 1708 to 1709.

**United States Code Annotated**

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

**§ 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.

Acts 1953, c. 147.

**Library References**

Counties ⇨186.5.

Municipal Corporations ⇨951.

Westlaw Topic Nos. 104, 268.

C.J.S. Municipal Corporations §§ 1704 to 1705.

**§ 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.

Acts 1953, c. 147.

**Library References**

Counties ☞ 188.

Municipal Corporations ☞ 937, 955.

Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 226.

C.J.S. Municipal Corporations §§ 1707, 1711.

Notes of Decisions

In general 1

1. In general

Corporations holding sewer revenue bonds of public service district, a public corporation and political subdivision of state, had right by mandamus to enforce and compel district and members of the Public Service Board to establish, charge and collect rates for services rendered

by district sufficient to provide for all operational and maintenance expenses, to pay, when due, principal and interest of revenue bonds issued by district, and to file tariffs reflecting such charges with Public Service Commission. Code, 16-13A-1 et seq., 16-13A-9, 16-13A-10, 16-13A-13, 16-13A-17. State ex rel. Allstate Ins. Co. v. Union Public Service Dist., 1966, 151 S.E.2d 102, 151 W.Va. 207. Mandamus ⇨ 110

§ 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.

Acts 1953, c. 147.

Library References

Counties ⇨114.  
Municipal Corporations ⇨328.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 161.  
C.J.S. Municipal Corporations §§ 1027 to 1029.

§ 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, 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.

Acts 1963, c. 75; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1997, c. 160, eff. 90 days after April 10, 1997; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

**Library References**

Counties Ⓒ110.	C.J.S. Counties § 147.
Municipal Corporations Ⓒ225.	C.J.S. Municipal Corporations §§ 882 to 892.
Westlaw Topic Nos. 104, 268.	

**§ 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.

Acts 1953, c. 147.

**Library References**

Counties Ⓒ188.	C.J.S. Counties § 226.
Municipal Corporations Ⓒ937, 955.	C.J.S. Municipal Corporations §§ 1707, 1711.
Westlaw Topic Nos. 104, 268.	

**Notes of Decisions**

**In general 1**

**1. In general**

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property

of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations Ⓒ 222; Municipal Corporations Ⓒ 225(1)

**§ 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.

Acts 1953, c. 147.

**Library References**

Counties ⇨175.  
Municipal Corporations ⇨913.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 218.  
C.J.S. Municipal Corporations §§ 1647 to 1648, 1651.

**§ 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.

Acts 1953, c. 147; Acts 1986, c. 81; Acts 1994, c. 61.

**Library References**

Counties ⇨18.  
Municipal Corporations ⇨5.  
Taxation ⇨2316, 3519.

Westlaw Topic Nos. 104, 268, 371.  
C.J.S. Counties § 31.  
C.J.S. Municipal Corporations § 11.

**Notes of Decisions**

In general 2  
Validity 1

c. 147; U.S.C.A.Const. Amend. 14. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ⇨ 4056; Municipal Corporations ⇨ 4

**1. Validity**

Statute authorizing creation of public service districts violates no provision of State Constitution, nor is it violative of Fourteenth Amendment to United States Constitution. Act 1953,

Statute authorizing creation of public service districts does not, in so far as it requires County Court to define territory to be included in public service district and appoint a board to govern same in first instance, involve unconstitutional

delegation of judicial functions to the County Court, Acts 1953, c. 147; Const. art. 8, § 24. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Constitutional Law ☞ 2355; Municipal Corporations ☞ 4

## 2. In general

Statute authorizing creation of public service districts confers upon public service board authority to create mortgage lien on the property of public service district, and action of legislature conferring such authority was within the legislature's power. Acts 1953, c. 147; Const. art. 10, § 8. State ex rel. McMillion v. Stahl,

1955, 89 S.E.2d 693, 141 W.Va. 233. Municipal Corporations ☞ 222; Municipal Corporations ☞ 225(1)

Title of act authorizing creation of public service districts in connection with acquisition, construction, maintenance, operation, improvement and extension of properties supplying water and sewerage services, clearly defines object and purposes of act and powers of governing board, and is sufficient to meet constitutional requirements. Acts 1953, c. 147; Const. art. 6, § 30. State ex rel. McMillion v. Stahl, 1955, 89 S.E.2d 693, 141 W.Va. 233. Statutes ☞ 123(3); Statutes ☞ 123(5)

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

All acts and proceedings taken by any county court of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect, 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.

Acts 1958, c. 14; Acts 1960, c. 19.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

Library References

Counties ⇨18.  
Municipal Corporations ⇨5.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 31.  
C.J.S. Municipal Corporations § 11.

**§ 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 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.

Acts 1958, c. 14; Acts 1960, c. 19; Acts 1965, c. 134.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

Library References

Counties ⇨47.  
Municipal Corporations ⇨166.  
Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 70 to 73.  
C.J.S. Municipal Corporations §§ 369 to 371.

**§ 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.

Acts 1958, c. 14; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 118; Acts 2002, c. 272, eff. 90 days after March 9, 2002.

#### Library References

Counties ⇨149.

Municipal Corporations ⇨864(3).

Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 185, 187.

C.J.S. Municipal Corporations §§ 1583 to 1585, 1587.

#### Notes of Decisions

In general 1

note, is permissible borrowing under this section. 62 W.Va. Op.Atty.Gen. 27 (May 6, 1988) 1988 WL 483331.

1. In general

The borrowing by PSD's of money from counties and/or municipalities, as evidenced by a

### § 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, twenty or twenty-four of this article without the prior consent and approval of the Public Service Commission: *Provided*, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after the eighth day of July, two thousand five, from the commission and where the cost of the project changes but the change does not affect the rates established for the project.

(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 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 provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.

Acts 1969, 1st Ex. Sess., c. 6; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1996, c. 213, eff. 90 days after March 9, 1996; Acts 1997, c. 159, eff. 90 days after April 12, 1997; Acts 2003, c. 184, eff. 90 days after March 7, 2003; Acts 2005, c. 193, eff. 90 days after April 9, 2005; Acts 2006, c. 190, eff. 90 days after March 10, 2006.

**Library References**

Counties ⇨114.  
Municipal Corporations ⇨270.  
Public Utilities ⇨145.  
Westlaw Topic Nos. 104, 268, 317A.

C.J.S. Counties § 161.  
C.J.S. Public Utilities §§ 26 to 32, 159 to 167,  
169 to 171, 177 to 178.

**Research References**

**ALR Library**

101 ALR 5th 287, Remedies for Sewage Treatment Plant Alleged or Deemed to be Nuisance.

**Notes of Decisions**

**In general 1**

**Certificate of public convenience and necessity 2**

**1. In general**

Proposed sewage treatment project complied with buffer zone requirements where all parties acknowledged that distance of proposed sewage lagoons from property owners' home was further than minimum buffer-zone requirement of 300 feet; Public Service Commission relied on ample evidence in record to support claim that proposed location was both cost-effective and

environmentally sound. Code, 16-13A-25, 24-2-11, 24-2-11(a). *Sexton v. Public Service Com'n*, 1992, 423 S.E.2d 914, 188 W.Va. 305. Municipal Corporations ⇨ 708

**2. Certificate of public convenience and necessity**

Public Service district must obtain certificate of public convenience and necessity before it can acquire or construct public service property. Code, 16-13A-25. *Sexton v. Public Service Com'n*, 1992, 423 S.E.2d 914, 188 W.Va. 305. Public Utilities ⇨ 113



At a regular session of the County Court, continued and held for the County of Wood, at the Court House thereof, on Tuesday, the 13th day of September, 1966, Present, Frank J. Harrison, President of said Court, and Harry C. Nicely, Commissioner.

The orders and proceedings of the previous session of this Court, held on Saturday, the 10th day of September, 1966, were read in open Court, approved and ordered signed.

IN RE: CLAYWOOD PARK PUBLIC SERVICE DISTRICT ENLARGEMENT

O R D E R

"On the 13th day of September, 1966, this matter came again to be heard, this Court having heretofore by order entered on August 23, 1966, fixed this date for a public hearing on the enlargement of Claywood Park Public Service District, and having provided in said order that all persons residing in, or owning, or having any interest in property in Claywood Park Public Service District, or in the proposed addition to Claywood Park Public Service District, might appear before the County Court at this hearing and have an opportunity to be heard for and against the enlargement of the said Public Service District.

It appearing to the Court from the certificate of the publisher thereof, that notice of this hearing was duly published as required by Chapter 16, Article 13a, of the Code of West Virginia of 1931, as amended, which said certificate is hereby ORDERED to be filed herein, and it further appearing to the Court that all interested persons have been afforded an opportunity of being heard for and against the enlargement of the said district, and it further appearing to the Court that no written protests have been filed by any qualified voters resituated in or residing within the said Public Service District or the proposed addition thereto, the Court did proceed to hear and consider testimony and evidence relating to the necessary, feasibility, and propriety of enlarging Claywood Park Public Service District so as to include the additional territory described in the petition heretofore filed herein, and in the notice above referred to, from all of which the Court does find that it is necessary, feasible and proper to enlarge Claywood Park Public Service District so as to include therein, the additional territory hereinafter fully described, and the Court does further find that the enlargement of Claywood Park Public Service District will be conducive to the preservation of public health and convenience within the area of the enlarged public service district. It is accordingly ORDERED as follows:

1.) That the boundaries of Claywood Park Public Service District heretofore created by this Court by order entered in the County Court of Wood County, on November, 21, 1964, be enlarged so as to include within the boundaries of the said public service district, the area described in the order last above referred to, and in addition thereto, the following addition:

BEGINNING on the Northerly bank of the Little Kanawha River at the point at which the present Southeasterly boundary of Claywood Park Public Service District intersects the said Northerly bank of the Little Kanawha River, and thence with the Northerly bank of the Little Kanawha River upstream to the mouth of Allen Run; thence with the center of Allen Run to the intersection of West Virginia State Route 47 and said Allen Run; thence South 58° West 12,000 feet, more or less, to a point in the present Southeasterly line of Claywood Park Public Service District; thence with the present Southeasterly line of Claywood Park Public Service

District South 50° West 7,800 feet, more or less, to the place of beginning; which said area is shown on a map entitled "Addition to Claywood Park Public Service District, Wood County, West Virginia", dated August, 1966, prepared by M. Edward Norman, professional Engineer, which said map has been filed with the Clerk of the County Court of Wood County, West Virginia.

THE COUNTY COURT OF WOOD COUNTY  
By: Frank J. Harrison, President."

There appearing no further business to claim the attention of this court, it is hereby ordered that this Court do now adjourn to meet in regular session on Thursday, the 15th day of September, 1966, at 9:30 o'clock A. M.

*Frank J. Harrison*  
\_\_\_\_\_  
President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: CLAYWOOD PARK PUBLIC SERVICE DISTRICT ENLARGEMENT

as the same appears of record in my said Office in ORDER BOOK 32, Page 122.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 2008.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

By: Burda Blonzie  
Deputy

At a regular session of the County Court, continued and held for the County of Wood, at the Court House thereof, Thursday, March 3th, 1973, Present, Marvin H. Leach, President of said Court and Victor H. Rafferty and James A. Pittro, Commissioners.

The orders and proceedings of the previous session of this Court held on Tuesday, March 6th, 1973, were read in open Court, approved and ordered signed.

IN THE CLAYWOOD PARK PUBLIC SERVICE DISTRICT

O R D E R

36/16/1

On this 3th day of March, 1973, the Court again considered the enlargement and reduction of Claywood Park Public Service District. The Court finds and determines that the written protests in the form of Petitions filed with the Court on March 3, 1973, do not constitute written protests by 30% or more of the qualified voters registered in or residing in the proposed boundaries of Claywood Park Public Service District. Accordingly, the Court having on February 6 and March 2 heard and considered testimony and evidence relating to the necessity, feasibility, and propriety of enlarging Claywood Park Public Service District so as to include the additional territory described in the petition heretofore filed herein, and in notice of said Public Hearing on February 6, 1973, and further did proceed to hear and consider evidence relating to the necessity, feasibility, and propriety of reducing Claywood Park Public Service District so as to remove therefrom the territory also described in the petition herein, and in the notice above referred to, and all interested persons having been afforded an opportunity to be heard for and against the enlargement and reduction of the said Public Service District the Court does find that it is necessary, feasible, and proper to enlarge Claywood Park Public Service District so as to include therein the additional territory hereinafter fully described and to reduce the said District by removing therefrom the territory described in the said petition, and the Court does further find that the enlargement and reduction of Claywood Park Public Service District will be conducive to the preservation of public health and convenience within the area of the enlarged public service district. It is accordingly ordered that the boundaries of Claywood Park Public Service District heretofore created by this Court by order entered on November 21, 1964, and enlarged by order entered on September 13, 1966, be again enlarged so as to include within the boundaries of the said Claywood Park Public Service District all of the area in Parkersburg, Clay, Walker, and Union Magisterial Districts of Wood County, West Virginia bounded and described as follows and that the District be reduced by removing therefrom that territory in Parkersburg District adjacent the present corporate limits of the City of Parkersburg more fully shown and described upon the map or plat hereinafter referred to:

BEGINNING on the northerly bank of the Little Kanawha River at a point in the line of the Parkersburg Magisterial District 2600 feet, more or less, upstream from the south of Northington Creek thence proceeding up the Little Kanawha River with the Parkersburg Magisterial south boundary to the Clay Magisterial boundary at Dry Run and continuing up the Little Kanawha River along the south boundary of Clay Magisterial District 47,400 feet to the south of Walker Creek; thence northeastward 41,700 feet to community of Doyle at the center line of the intersection of West Virginia State Route 31 and West Virginia Secondary Road No. 3/16, a common corner of Union Williams Public Service District; thence with the Union Williams Public Service District to nearly westward 28,500 feet to the community of Screener at the intersection of West Virginia Secondary Route 16 and 16/5; thence proceeding 9400 feet to the center of the intersection of Interstate Highway 77 and U. S. Route 50; thence the boundary proceeds 6200 feet, more or less, northwesterly to a point in the property line of land now owned by J. Stewart Dudley, the proposed corporation line of the City of Parkersburg; thence with the Dudley line extended S. 29° 13' W. 1500 feet, more or less, to the place of beginning, containing 35 square miles, more or less, which said area is shown on a map entitled Claywood Park Public Service District New and Enlarged Boundary Wood County, West Virginia, dated August 1, 1972, prepared by Carrone & Vaughn, Inc., Professional Engineers, which said map is attached to the petition heretofore filed herein and made a part thereof and which map reference is hereby made and had.

thence the boundary proceeds 10,100 feet, in a southwesterly direction to Dry Run approximately 800 feet, more or less, northeast of West Virginia State Route 47;

There appearing no further business to claim the attention of this Court, it is hereby ordered that this Court do now adjourn to meet in regular session, Saturday, March 10, 1973, at 9:00 o'clock, A. M.

\_\_\_\_\_  
President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: THE CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
ORDER

and the same appears of record in my said Office in ORDER BOOK 36, Page 161

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 2008.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

At a regular session of the County Commission, continued and held for the County of Wood, at the Court House thereof, Thursday, June 10, 1976, Present, Victor H. Rafferty, President of said Commission, James A. Nitro and Marvin H. Leach, Commissioners.

The orders and proceedings held on the 8th day of June, 1976, were read before this Commission, approved and ordered signed.

IN RE: GLAYWOOD PARK PUBLIC SERVICE DISTRICT ENLARGEMENT  
O R D E R

ON THE 10th day of June, 1976, at 10:00 o'clock, A. M., this matter came on to be heard, this Commission having heretofore by ORDER entered on May 13, 1976, and appears of Record in Order Book No. 37, at Page 257, fix this date and time for a public hearing on the enlargement of Glaywood Park Public Service District, and having provided in said Order that all persons residing in, or owning, or having any interest in property in Glaywood Park Public Service District, might appear before the County Commission at this hearing and have an opportunity to be heard for and against the enlargement of the said Public Service District.

Thereupon, Glaywood Park Public Service District tendered to the Commission for filing, the following:

- 1) The Affidavit of Mary E. Gheuvront that Notice of the time and place of this hearing was published in the Parkersburg Sentinel on the 20th day of May, 1976, which was more than ten (10) days prior to the date of this hearing.
- 2) The return of J. G. Chapman, a Deputy Sheriff in and for the County of Wood, State of West Virginia, that notice of the time and place of this hearing was posted by the said J. G. Chapman, at five (5) conspicuous places in Glaywood Park Public Service District and in the proposed enlargement of Glaywood Park Public Service District.

The Commission, having examined the foregoing, and the same appearing to be proper, the said affidavit and return are hereby ordered to be, and are hereby filed herein.

It further appearing to the Commission that all interested persons have been afforded an opportunity of being heard, for and against, the enlargement of the said Public Service District, and it further appearing to this Commission that no written protests have been filed by any qualified voters, registered or residing within the said Public Service District or the proposed addition thereto, the Commission did proceed to hear and consider testimony and evidence relating to the necessity and feasibility of enlarging Glaywood Park Public Service District, so as to include the additional territory described in the Petition heretofore filed, herein, and in the Notice heretofore referred to, from all of which the Commission does find that it is necessary, feasible and proper to enlarge Glaywood Park Public Service District so as to include the additional territory described in said Petition, and the Commission does further find that the enlargement of Glaywood Park Public Service District will be conducive to the preservation of public health, comfort and convenience within the area of the enlarged public service district.

IT IS ORDERED, ENLARGED, that the boundaries of Glaywood Park Public Service District heretofore created by this Commission (formerly Court and approved by commission), by order entered on November 21, 1964, and enlarged by order entered on December 13, 1966, and reduced and enlarged by Order entered on March 8, 1972, do again enlarge so as to include within the boundaries of the said Glaywood Park Public Service District, all of the area bounded and described as follows:

BEGINNING on the northerly bank of the Little Kanawha River at a point in the line of the Parkersburg Magisterial District 2,600 ft., more or less, westward from the mouth of Warthington Creek; thence, proceeding up the Little Kanawha River with the south boundary of Parkersburg and Clay Magisterial Districts, 73,700 ft., to the intersection of the Wood-Mint County line (Point #2); thence, proceeding with the Wood-Mint County line 42,000 ft., more or less, to the intersection of the Ritchie County line near the community of Jackson (Point #3); thence, proceeding along the Wood-Ritchie County line 42,000 ft., more or less, to the intersection of the Wood-Ritchie-Pleasants County line (Point #4); thence, proceeding along the Wood-Pleasants County line 43,000 ft., more or less, to the mouth of Horsecock Run and Bull Run and a point on the Union-Williams Public Service District boundary (Point #5); thence, proceeding in a southwesterly direction with the Union-Williams Public Service District boundary 19,475 ft., more or less, to the community of Doyle (Point #6); thence, proceeding in a westerly direction along the Union-Williams Public Service District boundary 28,500 ft., more or less, to the community of Foreman at the intersection of West Virginia Secondary Route 16 and 16 1/2 (Point #7); thence, continuing in a southwesterly direction 9,400 ft. to the intersection of U. S. Routes 50 and Interstate Highway I-77 (Point #8); thence, continuing in a southwesterly direction 10,000 ft. to a point on Dry Run 800 ft., more or less, from State Route 47 (Point #9); thence, proceeding in a northwesterly direction 6,200 ft., more or less to a point in the property line of land now owned by J. Stewart Ludley, the proposed corporation line of the City of Parkersburg (Point #10); thence, with the Ludley line extended 300' 13" 1,500 ft., more or less, to the place of beginning, containing 1072 1/2 acres, more or less, which said area is shown on a map entitled "Glaywood Park Public Service District, Wood County, West Virginia, March, 1976", prepared by Jerome S. Laughlin, Inc., Professional Engineers, which said map is on file in the office of the Clerk of the County Commission of Wood County, West Virginia.

THE COUNTY COMMISSION OF WOOD COUNTY

s/ Victor H. Rafferty, President  
s/ James A. Nitro, Commissioner  
s/ Marvin H. Leach, Commissioner

JUNE  
THE 10: 10, 1976

The Commission do further business to bring the attention of this Commission, it is hereby ordered that this Commission do now adjourn to meet in regular session, Thursday, June 17, 1976, at 9:00 o'clock, A. M.

*Victor H. Rafferty*  
President

APRIL TERM

NINTH DAY  
MONDAY, MAY 2, 1994

MAY, 1994

At a regular session of the County Commission, continued and held for the County of Wood, at the Court House thereof, Monday, May 2, 1994, Present, Holmes R. Shaver, President of said Commission, and Jean Grapes and Steven A. Grimm, Commissioners.

The orders and proceedings of the previous session of this Commission, held on Thursday, April 28, 1994, were read before the Commission, approved and ordered signed.

CASTO & HARRIS INC., SPEAKERS, W. VA. REG. ORDER NO. 95125L-51

IN RE: CLAYWOOD PARK PUBLIC SERVICE DISTRICT ENLARGEMENT.

O R D E R

On the 2nd day of May, 1994, at 10:00 a.m., this matter came to be heard, this Commission having heretofore by ORDER entered on the 4th day of April, 1994, which appears of record in Order Book 55, at Page 555, fixed this date and time for a public hearing on the enlargement of Claywood Park Public Service District, and having provided in the Order that all persons residing in, or owning, or having any interest in property in Claywood Park Public Service District, or in the proposed addition thereto, might appear before the Commission at this hearing and have the opportunity to be heard for and against the enlargement of the District.

Thereupon, Claywood Park Public Service District tendered to the Commission for filing:

1) The affidavit of Heather J. Byers that notice of the time and place of this hearing was published in the Parkersburg Sentinel on the 13th day of April, 1994, which was more than ten (10) days prior to the date of this hearing.

2) The affidavit of Joyce Moler that notice of the time and place of this hearing was published in the Wirt County Journal on the 13th day of April, 1994, which was more than ten (10) days prior to the date of this hearing.

3) The affidavit of R. Neil Bee, an employee of Claywood Park Public Service District, that notice of the time and place of this hearing was posted by him in at least (5) conspicuous places in the proposed boundaries of Claywood Park Public Service District not less than ten (10) days before the date of this hearing.

4) the certificate of service showing that a copy of the notice of the time and place of this hearing was mailed to the Clerk of the County Commission of Wirt County, at the Wirt County Courthouse, Elizabeth, West Virginia, not less than ten days before the date of this hearing.

5) The certificate of service showing that a copy of the notice of the time and place of this hearing was mailed to the Executive Secretary of the Public Service Commission of West Virginia, at 201 Brooks Street, Post Office Box 812, Charleston, West Virginia, not less than ten (10) days before the date of this hearing.

The Commission having examined the foregoing and the same appearing to be proper, these documents are hereby ordered to be, and are hereby, filed herein.

It further appearing to the Commission that all interested person have been afforded an opportunity of being heard, for and against, the enlargement of the District, the Commission did proceed to hear and consider testimony and evidence relating to the necessity and feasibility of enlarging Claywood Park Public Service District, so as to include therein the territory described in the Petition heretofore filed herein, and in the notice hereinabove referred to. From all of which, the Commission does find that it is necessary, feasible and proper to enlarge Claywood Public Service District so as to include the territory described in the Petition; and that the enlargement of Claywood Park Public Service District will be conducive to the preservation of the public health, comfort and convenience within the area of the enlarged public service district.

IT IS ACCORDINGLY ORDERED, as follows:

1) The the boundaries of Claywood Park Public Service District be enlarged so as to include the boundaries of the District, for purposes of providing water service, the area which is more fully described and set forth on Exhibit A attached hereto and made a part hereof by reference.

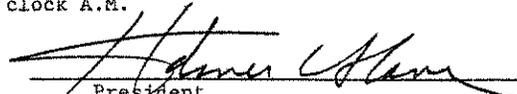
2) That the Petitioner cause a certified copy of this Order to be served upon the Executive Secretary of the Public Service Commission of West Virginia within ten (10) days of its entry.

THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

(SEE PHOTOSTAT PAGES IN BOOK 44K  
PAGE 366 FOR COPY OF  
BOUNDARY EXPANSION - 1994  
IN ITS ENTIRETY)

s/ Holmes R. Shaver  
Holmes R. Shaver, President  
s/ Steven A. Grimm  
Steven A. Grimm, Commissioner  
s/ Jean Grapes  
Jean Grapes, Commissioner

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission do now adjourn to meet in regular session, Thursday, May 5, 1994, at 9:00 o'clock A. M., and sitting in Special Session, Tuesday, May 3, 1994, at 9:00 o'clock A.M.

  
President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: CLAYWOOD PARK PUBLIC SERVICE DISTRICT ENLARGEMENT

ORDER

and the same appears of record in my said Office in ORDER BOOK 55, Page 575

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 20 08.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

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

Deputy

IN THE COUNTY COMMISSION OF WIRT COUNTY, WEST VIRGINIA

IN RE:

CLAYWOOD PARK PUBLIC SERVICE  
DISTRICT ENLARGEMENT

ORDER

On the 3rd day of May, 1994, at 10:00 a.m., this matter came to be heard, this Commission having heretofore by ORDER entered on the 5th day of April, 1994, which appears of record in Book No. \_\_\_\_\_, at Page \_\_\_\_\_, fixed this date and time for a public hearing on the enlargement of Claywood Park Public Service District, and having provided in the Order that all persons residing in, or owning, or having any interest in property in Claywood Park Public Service District, or in the proposed addition thereto, might appear before the Commission at this hearing and have the opportunity to be heard for and against the enlargement of the District.

Thereupon, Claywood Park Public Service District tendered to the Commission for filing:

- 1) The affidavit of Heather J. Byers that notice of the time and place of this hearing was published in the Parkersburg Sentinel on the 13th day of April, 1994, which was more than ten (10) days prior to the date of this hearing.
- 2) The affidavit of Joyce Moler that notice of the time and place of this hearing was published in the Wirt County Journal on the 13th day of April, 1994, which was more than ten (10) days prior to the date of this hearing.
- 3) The affidavit of R. Neil Bee, an employee of Claywood Park Public Service District, that notice of the time and place of this hearing was posted by him in at least five (5) conspicuous places in the proposed boundaries of Claywood Park Public Service District not less than ten (10) days before the date of this hearing.
- 4) The certificate of service showing that a copy of the notice of the time and place of this hearing was mailed to the Clerk of the County Commission of Wood County, at the Wood County Courthouse, Parkersburg, West Virginia, not less than ten days before the date of this hearing.
- 5) The certificate of service showing that a copy of the notice of the time and place of this hearing was mailed to the Executive Secretary of the Public Service Commission of West Virginia, at 201 Brooks Street, Post Office Box 812, Charleston, West Virginia, not less than ten (10) days before the date of this hearing.

The Commission having examined the foregoing and the same appearing to be proper, these documents are hereby ordered to be, and are hereby, filed herein.

It further appearing to the Commission that all interested persons have been afforded an opportunity of being heard, for and against, the enlargement of the District, the Commission did proceed to hear and consider testimony and evidence relating to the necessity and feasibility of enlarging Claywood Park Public Service District, so as to include therein the territory described in the Petition heretofore filed herein, and in the notice hereinabove referred to. From all of which, the Commission does find that it is necessary, feasible and proper to enlarge Claywood Park Public Service District so as to include the territory described in the Petition; and that the enlargement of Claywood Park Public Service District will be conducive to the preservation of the public health, comfort and convenience within the area of the enlarged public service district.

IT IS ACCORDINGLY ORDERED, as follows:

- 1) That the boundaries of Claywood Park Public Service District be enlarged so as to include within the boundaries of the District, for purposes of providing water service, the area which is more fully described and set forth on Exhibit A attached hereto and made a part hereof by reference.
- 2) That the Petitioner cause a certified copy of this Order to be served upon the Executive Secretary of the Public Service Commission of West Virginia within ten (10) days of its entry.

THE COUNTY COMMISSION OF WIRT COUNTY,  
WEST VIRGINIA

Paul M. Bumgarner  
Paul M. Bumgarner, President

Harry Matheny  
Harry Matheny

Herman Full  
Herman Full

240441

I, BARBARA CHEVRONT, do hereby certify  
that this is a true copy from the record.

Teste: BARBARA CHEVRONT

Wirt County Clerk

By

Deputy

I, BARBARA CHEVRONT, do hereby certify  
that this is a true copy from the record.

Date:

5-4-94

Barbara Chevront  
Clerk

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: September 14, 1994

**FINAL**

10-4-94

CASE NO. 94-0307-PWD-PC

WOOD AND WIRT COUNTY COMMISSIONS

Petition for approval of expansion of territorial boundaries of Claywood Park Public Service District.

RECOMMENDED DECISION

PROCEDURE

On April 15, 1994, the Wood and Wirt County Commissions filed with the Public Service Commission (Commission) a petition to extend the boundaries of the Claywood Park Public Service District (Claywood Park PSD), located in Wood County, into the Newark, Clay, Elizabeth and Tucker Magisterial Districts of Wirt County.

On May 18, 1994, Staff Attorney J. Joseph Watkins filed the Initial and Final Joint Staff Memorandum, with attached memorandum from Robert M. Hubbard, Senior Utilities Analyst of the Public Service District Division of the Commission, stating that the Wood and Wirt County Commissions appear to have acted in substantial compliance with West Virginia Code §16-13A-2 and that Staff recommended approval of the boundary expansion.

On May 23, 1994, the Commission issued an Order referring this matter to the Division of Administrative Law Judges (ALJ) for decision to be issued no later than November 10, 1994.

On June 9, 1994, the undersigned ALJ issued a Procedural Order stating that, under West Virginia Code §16-13A-2, the Commission is required to provide a hearing "in the affected county" any time a county commission petitions to expand the boundaries of a public service district, and, accordingly, scheduling hearing on this matter on August 23, 1994, at 10:00 a.m. in the Judge's Chambers, City Building, 2nd Floor, 2nd and Avery Streets, Parkersburg, West Virginia, and at 2:00 p.m. in the County Commissioners' Courtroom, Wirt County Courthouse, Elizabeth, West Virginia. The Procedural Order also required publication of the Notice of Hearings in both counties.

Hearing was held as scheduled. Mr. Watkins appeared on the behalf of Staff, and John S. Bailey appeared on behalf of the Claywood Park PSD. Mr. Watkins called as witnesses Mr. Hubbard and R. Neil Bee, the General Manager of the Claywood Park PSD. No protestant appeared at either part of the bifurcated hearing. Rather, Karen Caltrider, whose residence on Camp Barbe Road would be within the expanded boundaries of the Claywood Park PSD, appeared at hearing in Parkersburg and testified in support of

the expansion. At hearing in Elizabeth twenty-two individuals appeared in support of<sup>1</sup> the expansion, whose names were entered into the record; none testified.

### EVIDENCE

Mr. Hubbard's memorandum of May 2, 1994, was entered into evidence as Staff Exhibit 1. Mr. Hubbard testified that the boundary expansions are necessary to furnish new water service and that there was no overlapping with public service districts or other utilities. (Tr. 7). He stated that the Claywood Park PSD now serves approximately 241 customers but that, should the Commission approve an application for a certificate of convenience and necessity now pending before it in Case No. 94-0131-PWD-CN, the Claywood Park PSD would serve approximately 81 new customers, and that expansion of its boundaries is necessary to include the new project. (Tr. 8). He stated that Staff considers it in the best interest of the public to approve the expansion at issue in this matter.

Admitted into evidence were affidavits of publication establishing that the Notice of Hearings was published in the Parkersburg Sentinel and the Wirt County Journal on August 10, 1994. (Exhibits B and D). Moreover, affidavits of publication were submitted into evidence showing that notice of public hearing before the Wood County Commission on May 2, 1994, had been published in the same newspapers on April 13, 1994. (Exhibits A and C). An affidavit from Mr. Bee also established that posting of notice was also effected. (Staff Exhibit 2).

Mr. Bee testified that the water treatment plant that is part of the project being considered for a certificate of convenience and necessity will have adequate capacity to provide service to the area of expansion. (Tr. 13). He stated that the people who will receive the water are reliant presently on wells or cisterns, and some haul water to their homes. (Tr. 13). He stated that there is presently no water utility in the area of the expansion and he knows of no feasible alternative other than the expansion at issue in this matter. (Tr. 14).

Ms. Caltrider testified that she is dependent on well water. (Tr. 16). She also stated that the expansion would benefit the community as a whole, and particularly stated that it would be in the interest of Camp Barbe, a 4-H camp that is also used for the Wirt County Fair and other gatherings, to have a new supply of water, because its well water is extremely poor. (Tr. 16-19).

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<sup>1</sup>Lyle R. Bibbee, Ritchie Cooper, Harley Morgan, Eileen Morgan, Juanita Matheny, Thelma Bibbee, W.G. Monroe, James Matheny, Clayburn J. Hanna, Beulah Cooper, Bonnie Powell, Freda Nicholson, Harvey Nicholson, Harry Matheny, Thelma McCue, Patricia Ludwig, Betty Miller, Barbara Chevront, Suellen Calebaugh, Wayne Wright, Homer Ludwig, Michael Bumgarner.

## FINDINGS OF FACT

1. On April 15, 1994, the Wood and Wirt County Commissions filed with the Public Service Commission a petition to extend the boundaries of the Claywood Park Public Service District, located in Wood County, into the Newark, Clay, Elizabeth and Tucker Magisterial Districts of Wirt County. (See petition).

2. Commission Staff recommended approval of the proposed expansion. (See Staff Exhibit 1, Tr. 8).

3. The Wood County Commission held public hearing on May 2, 1994, on the proposed expansion and provided notice thereof in Wood and Wirt Counties by publication in the the Parkersburg Sentinel and the Wirt County Journal on April 13, 1994, and by posting. (See petition, Exhibits A and C, and Staff Exhibit 2).

4. Notice of Hearing held before the undersigned ALJ on August 23, 1994, was published in the the Parkersburg Sentinel and the Wirt County Journal on August 10, 1994. (See Exhibits B and D).

5. No protestants appeared at the public hearing held August 23, 1994, in Parkersburg and Elizabeth, West Virginia, but supporters of the expansion appeared at hearing. (See Tr. 4-5, 22-23).

## CONCLUSIONS OF LAW

1. The Wood and Wirt County Commissions substantially complied with the requirements of W.Va. Code §16-13A-2.

2. Because of the above conclusion and the facts given in Findings of Fact 2, 4 and 5, it is appropriate to grant the petition as an unprotested case.

## ORDER

IT IS, THEREFORE, ORDERED that the petition of the Wirt and Wood County Commission filed April 15, 1994, to extend the boundaries of the Claywood Park Public Service District into the Newark, Clay, Elizabeth and Tucker Magisterial District of Wirt County, be, and it hereby is, granted.

IT IS FURTHER ORDERED that within ten (10) days of the date this decision becomes a final order the Wirt and Wood County file with the Commission Orders signed by the Commissions of said counties expanding the Claywood Park Public Service District, consistent with said petition.

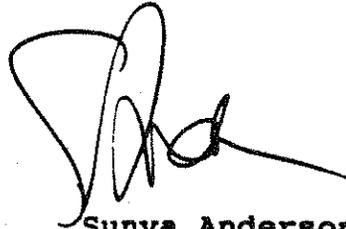
IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

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

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

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



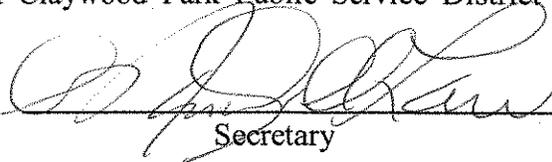
Sunya Anderson  
Administrative Law Judge

SA:mal

CERTIFICATION

I, C. Randall Law, Secretary of the Public Service Board of the Claywood Park Public Service District, Wood and Wirt Counties, West Virginia, do hereby certify that the attached is a true and accurate copy of the Rules of Procedure of Claywood Park Public Service District and that the foregoing remain in full force and effect and have not been amended or repealed.

Given under my hand and seal of Claywood Park Public Service District this 8th day of May, 2008.

  
Secretary

[SEAL]

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Vertical text or markings along the right edge of the page, possibly bleed-through from the reverse side.

RULES OF PROCEDURE

PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

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

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

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

Section 4. The fiscal year of the District shall begin on the 1<sup>st</sup> 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 Wood 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 Division 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 members served to the Public Service Commission of West Virginia on the first day of July of 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 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 Chairman 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 48 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 Wood 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 48 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

WTAP-TV

One Television Plaza  
Parkersburg, West Virginia 26101

WXIL-FM, WHBR-FM,  
WGGE-FM, WKYG-AM  
WADC-AM

P. O. Box 1228  
Parkersburg, West Virginia 26102

WRZZ-FM, WLTP-AM,  
WRVB-FM, WNUS-FM,  
WVVV-FM, WDMX-FM

P. O. Box 5559  
Vienna, West Virginia 26105

The Parkersburg News

519 Juliana Street  
Parkersburg, West Virginia 26101

The Parkersburg Sentinel

519 Juliana Street  
Parkersburg, West Virginia 26101

Wirt County Journal

P. O. Box 309  
Elizabeth, West Virginia 26143

notice shall be considered distributed to a news medium when it has either been (i) pressed 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 or (ii) sent by facsimile transmission to such news medium. 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 48 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. 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 48 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 Wood 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 48 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 either been (i) 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, or (ii) sent by facsimile transmission to such news medium.

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 Chairman 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

in an executive session and exclude the public only when a closed session is required for one 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 act by secret or written ballot.

Rule No. 7. Broadcasting of Meetings. Except as otherwise provided in this chapter, any radio or television station is entitled to broadcast all or any part of a Board meeting which is 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 Chairman, Secretary and Treasurer. The Chairman shall be elected from the members of the Board. The Secretary and Treasurer need not be members of the Board.

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 Chairman shall preside as Chairman 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 Chairman is absent from any meeting, the remaining members of Board shall select a temporary Chairman.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. If requested by the County Commission, duplicate records shall be filed with the County Commission and shall include minutes of all Board meetings. He/She shall, together with the Chairman, 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. 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 monthly 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 Chairman and Secretary, or such other person or persons authorized by the Chairman and 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.

At a regular session of the County Court, continued and held for the County of Wood, at the Court House thereof, on Saturday, the 21st day of November, 1964, Present, J. L. Amos, President of said Court, and Frank J. Harrison and Harry C. Nicaly, Commissioners. The orders and proceedings of the previous session of this Court, held on Thursday, the 19th day of November, 1964, were read in open Court, approved and ordered signed.

IN RE: CLAYWOOD PARK PUBLIC SERVICE DISTRICT

On the 21st day of November, 1964, this matter came upon again to be heard, this Court having heretofore on October 27, 1964, having fixed this date for a public hearing on the creation of the proposed Claywood Park Public Service District and having provided in the said Order that all persons residing in or owning or having any interest in property in the said proposed public service district might appear before the County Court at this hearing and have an opportunity to be heard for and against the creation of the said public service district.

It appearing to the Court from the certificate of the publisher thereof that notice of this hearing was duly published as required by Chapter 16, Article 13a of the Code of West Virginia, 1931, as amended, which said certificate is hereby ORDERED to be filed herein, and it further appearing to the Court that all interested persons have been afforded an opportunity of being heard for and against the creation of the said district and it further appearing to the Court that no written protests have been filed by any qualified voters registered and residing within the said proposed public service district, the Court did proceed to hear and consider testimony and evidence relating to the feasibility of the creation of the said public service district from all of which the Court does find that it is feasible and desirable to create the proposed Claywood Park Public Service District and that the construction and acquisition and maintenance, operation and improvement of the public service properties by the proposed public service district will be conducive to the preservation of public health and convenience within the area of the proposed public service district hereinafter described. It is accordingly ORDERED as follows:

1. That a public service district within Wood County, West Virginia, is hereby created and said district shall have the following boundaries:

BEGINNING on the northerly bank of the Little Kanawha River at a point in the center of Worthington Creek and thence with the center line of Worthington Creek upstream in a general northeasterly direction fifteen hundred (1500) feet more or less to a point; thence south thirty (30) degrees east eight thousand one hundred (8,100) feet more or less to a point; thence north sixty-three (63) degrees east crossing Dry Run twelve hundred (1200) feet more or less to a point; thence south seventy-three (73) degrees ten (10) minutes east eighteen hundred (1800) feet more or less to a point in the westerly controlled access right-of-way line of Interstate Route #77; thence north seventy-eight (78) degrees fifty (50) minutes west fifty-five hundred (5500) feet more or less to a point; thence north ten (10) degrees east crossing U. S. Route #50 six thousand four hundred (6,400) feet to a point; thence south forty-one (41) degrees east twenty-nine hundred (2900) feet to a point; thence south three (3) degrees east twenty-five hundred (2500) feet to a point; thence south sixty-five (65) degrees east twenty-nine hundred (2900) feet more or less to a point; thence south eight (8) degrees ten (10) minutes east twenty-two hundred (2200) feet more or less to a point; thence south forty (40) degrees twenty-five (25) minutes west crossing U. S. Route #50 five thousand four hundred (5,400) feet more or less to a point; thence west one hundred (100) feet to a point; thence south fifty (50) degrees thirty (30) minutes west crossing State Route #47 thirteen thousand two hundred (13,200) feet more or less to a point on the northerly bank of the Little Kanawha River; thence with the northerly bank of the Little Kanawha River down stream twenty-seven thousand (27000) feet more or less to the place beginning.

2. That said public service district as created shall have the name and corporate name of Claywood Park Public Service District and shall constitute a public corporation and political subdivision of the State of West Virginia having all of the powers, rights and duties conferred upon public service districts by the laws of the State of West Virginia and particularly by Chapter 16, Article 13a of the Code of West Virginia, 1931, as amended.

THE COUNTY COURT OF WOOD COUNTY  
By J. Lloyd Amos, President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: CLAYWOOD PARK PUBLIC SERVICE DISTRICT

as the same appears of record in my said Office in ORDER BOOK 29, Page 418.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 23RD day of JUNE, 2006.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

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

*Penny Givens*

Deputy

## ARTICLE 13A

### PUBLIC SERVICE DISTRICTS

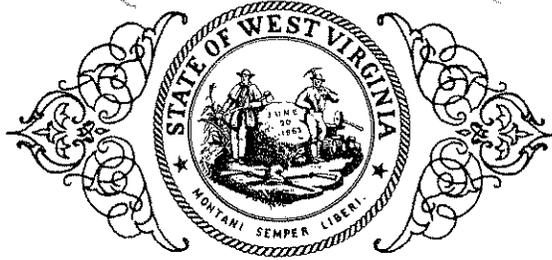
#### Section

- 16-13A-1. Legislative findings.
- 16-13A-1a. Jurisdiction of the public service commission.
- 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
- 16-13A-1c. General purpose of districts.
- 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State.
- 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
- 16-13A-3a. Removal of members of public service board.
- 16-13A-4. Board chairman; members' compensation; procedure; district name.
- 16-13A-5. General manager of board.
- 16-13A-6. Employees of board.
- 16-13A-7. Acquisition and operation of district properties.
- 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- 16-13A-9a. Limitations with respect to foreclosure.
- 16-13A-10. Budget.
- 16-13A-11. Accounts; audit.
- 16-13A-12. Disbursement of district funds.
- 16-13A-13. Revenue bonds.
- 16-13A-14. Items included in cost of properties.
- 16-13A-15. Bonds may be secured by trust indenture.
- 16-13A-16. Sinking fund for revenue bonds.
- 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.
- 16-13A-18. Operating contracts.
- 16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
- 16-13A-19. Statutory mortgage lien created; foreclosure thereof.
- 16-13A-20. Refunding revenue bonds.
- 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.
- 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.
- 16-13A-23. Validation of acts and proceedings of public service boards.
- 16-13A-24. Acceptance of loans, grants or temporary advances.
- 16-13A-25. Borrowing and bond issuance; procedure.

#### § 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

# 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, AS INDICATED BY THE RECORDS OF THIS OFFICE.

*Given under my hand and the  
Great Seal of the State of  
West Virginia on*

May 5, 2008

*Betty Ireland*  
Secretary of State



CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS PROJECT)  
SERIES 2008

BOND TRANSCRIPT

TABLE OF CONTENTS

1. Certified Copy of Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended
2. Certified Copy of the Order of the County Commission of Wood County, West Virginia, creating Claywood Park Public Service District
3. Certified Copies of Orders of the County Commissions of Wood and Wirt Counties, West Virginia, enlarging the boundaries of Claywood Park Public Service District
4. Certified Copy of Claywood Park Public Service District's Rules of Procedure
5. Certified Copies of Orders Appointing Members of the Public Service Board of Claywood Park Public Service District and their Oaths of Office
6. Certified Copy of the Minutes of the Claywood Park Public Service Board's Annual Organization Meeting on February 12, 2008
7. Certified Copy of the Minutes of the Claywood Park Public Service Board's Meeting on May 6, 2008, adopting the Bond Resolution
8. Certified Copy of the Resolution passed by the Public Service Board of the Claywood Park Public Service District, authorizing the District's Water Revenue Bond (Water System Improvements Project), Series 2008
9. Engineer's Certificate
10. Accountant's Certificate
11. RUS Consent to the issuance of the Series 2008 Bonds
12. Order of the Public Service Commission of West Virginia which became final November 28, 2007, granting the Certificate of Convenience and Necessity to Claywood Park Public Service District for its Water System Improvements Project

CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND (WATER SYSTEM IMPROVEMENT PROJECT)  
SERIES 2008

BOND TRANSCRIPT

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13. General Certificate, together with copy of the Prior Resolution
14. Opinion of Bowles Rice McDavid Graff & Love LLP
15. Receipt for Series 2008 Bond and Transcripts
16. Receipt for Series 2008 Bond Proceeds
17. Specimen Series 2008 Bond
18. West Virginia Municipal Bond Commission New Issue Report Form

\$2,900,000.00

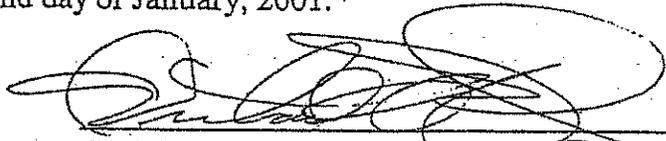
CLAYWOOD PARK PUBLIC SERVICE DISTRICT

WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS  
PROJECT), SERIES 2008

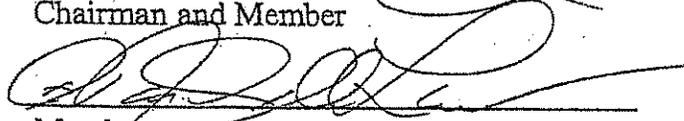
ARTICLE VII  
AMENDMENTS TO RULES OF PROCEDURE

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 2nd day of January, 2001.



Chairman and Member



Member



Member

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69/351  
OCTOBER TERM  
2002

THURSDAY, NOVEMBER 7, 2002  
ELEVENTH DAY

NOVEMBER,

At a Regular Session of the County Commission, continued and held for the County of Wood at the Courthouse thereof, Thursday, November 7, 2002, Present, Robert K. Tebay, President of said Commission, and Rick Modesitt, Commissioner.

The orders and proceedings of the previous sessions of this Commission, held on Monday, November 4, 2002, were read before the County Commission, approved and ordered signed.

s/Rick Modesitt  
Rick Modesitt, Commissioner

IN RE: THE COUNTY COMMISSION REAPPOINTED MICHAEL A. MILLER TO THE CLAYWOOD PARK PUBLIC SERVICE DISTRICT BOARD.

ORDER

On this date, the County Commission of Wood County, upon a motion made by Rick Modesitt, seconded by Robert K. Tebay, and passed, reappointed Michael A. Miller to the Claywood Park Public Service District Board. Said reappointment is pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to boards and authorities. Mr. Miller's new term will expire on November 1, 2008.

Approved:  
THE COUNTY COMMISSION OF WOOD COUNTY  
s/Robert K. Tebay  
Robert K. Tebay, President  
s/Rick Modesitt  
Rick Modesitt, Commissioner

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission do now adjourn to meet in Regular Session, Thursday, November 14, 2002, at 9:30 o'clock A.M., and sitting in Special Session, Tuesday, November 12, 2002, at 9:30 o'clock A.M., and in Special Session Wednesday, November 13, 2002, at 9:30 o'clock A.M. Ex-Officio as a Board of Canvassers for the General Election, held on November 5, 2002.

  
President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

COUNTY COMMISSION REAPPOINTED MICHAEL A. MILLER TO THE CLAYWOOD PARK PUBLIC  
SERVICE DISTRICT BOARD

as the same appears of record in my said Office in ORDER BOOK 65, Page 351.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 2008.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

By: Brenda Blodin  
Deputy

65/385

THURSDAY, NOVEMBER 14, 2002  
FOURTEENTH DAY

OCTOBER TERM  
NOVEMBER 2002

At a Regular Session of the County Commission, continued and held for the County of Wood at the Courthouse thereof, Thursday, November 14, 2002, Present, Robert K. Tebay, President of said Commission, Rick Modesitt, and K. D. Merritt, Commissioners.

The orders and proceedings of the previous sessions of this Commission, held on Thursday, November 7, 2002, Tuesday, November 12, and Wednesday, November 13, 2002, were read before the County Commission, approved and ordered signed.

IN RE: MICHAEL A. MILLER—OATH OF OFFICE—REAPPOINTED MEMBER OF THE CLAYWOOD PUBLIC SERVICE DISTRICT BOARD.  
STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO-WIT:

I, MICHAEL A. MILLER, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully and impartially discharge the duties of the office of REAPPOINTED MEMBER TO THE CLAYWOOD PUBLIC SERVICE DISTRICT BOARD in and for Wood County, West Virginia, to the best of my skill and judgment during my continuance in the same; SO HELP ME GOD.

s/ Michael A. Miller

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 14<sup>th</sup> day of November, 2002

Jamie Six,

Clerk Wood County Commission

By: Brenda Blondin, Deputy"

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission do now adjourn to meet in Regular Session, Thursday, November 18, 2002, at 9:30 o'clock A.M.



President

OCTOBER TERM

MONDAY, NOVEMBER 1, 2004  
SEVENTH DAY

NOVEMBER, 2004

At a Regular Session of the County Commission, continued and held for the County of Wood at the Courthouse thereof, Monday, November 1, 2004, Present, Rick Modesitt, President of said Commission, K. D. Merritt, and Robert K. Tebay, Commissioners.

The orders and proceedings of the previous sessions of this Commission, held on Thursday, October 28, 2004, and in Special Session, Thursday, October 28, 2004, were read before the County Commission, approved and ordered signed.

IN RE: THE COUNTY COMMISSION REAPPOINTED EDNA SUMMERS TO THE CLAYWOOD PARK PUBLIC SERVICE DISTRICT BOARD. HER NEW TERM WILL EXPIRE NOVEMBER 1, 2010.

ORDER

On this date, and pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments being made by the County Commission of Wood County, the County Commission, upon a motion made by K.D. Merritt, seconded by Robert K. Tebay and made unanimous by Rick Modesitt, reappointed Edna Summers to the Claywood Park Public Service District Board. Her new term will expire November 1, 2010.

Approved:

THE COUNTY COMMISSION OF WOOD COUNTY

s/Rick Modesitt

Rick Modesitt, President

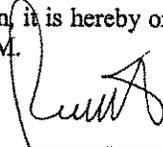
s/K.D. Merritt

K.D. Merritt, Commissioner

s/Robert K. Tebay

Robert K. Tebay, Commissioner

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission do no adjourn to meet in Regular Session, Thursday, November 4, 2004, at 9:30 o'clock A.M.

  
\_\_\_\_\_  
President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: THE COUNTY COMMISSION REAPPOINTED EDNA SUMMERS TO THE CLAYWOOD

PARK PUBLIC SERVICE DISTRICT BOARD. HER NEW TERM WILL EXPIRE

NOVEMBER 1, 2010

as the same appears of record in my said Office in ORDER BOOK 66, Page 430.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 2008.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

By: *Yvonne T. Blodgett*

Deputy

OCTOBER TERM

MONDAY, DECEMBER 18, 2006  
TWENTY SECOND DAY

DECEMBER 2006

At a Regular Session of the County Commission, continued and held for the County of Wood at the Courthouse thereof, Monday, December 18, 2006, Present, Gary D. Deem, President of said Commission, Robert K. Tebay, and Rick Modesitt, Commissioners.

The orders and proceedings of the previous sessions of this Commission, held on Thursday, December 14, 2006, were read before the County Commission, approved and ordered signed.

CARTO & HARRIS, INC. SPENCER, WV RE-ORDER NO. 15075-005 J1211011

IN RE: THE COUNTY COMMISSION REAPPOINTED RANDALL LAW TO THE CLAYWOOD PARK PUBLIC SERVICE DISTRICT BOARD.

ORDER

On this date, the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by Rick Modesitt and made unanimous by Gary D. Deem, reappointed Randall Law to the Claywood Park Public Service District Board. Said appointment is pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to Boards and Authorities. Mr. Law's new term will expire on November 1, 2012.

Approved:

THE COUNTY COMMISSION OF WOOD COUNTY

s/Gary D. Deem

Gary D. Deem, President

s/Robert K. Tebay

Robert K. Tebay, Commissioner

s/Rick Modesitt

Rick Modesitt, Commissioner

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission do now adjourn to meet in Regular Session, Thursday, December 14, 2006, at 9:30 o'clock A.M.

  
President

27/536

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: THE COUNTY COMMISSION REAPPOINTED RANDALL LAW TO THE CLAYWOOD  
PARK PUBLIC SERVICE DISTRICT BOARD

as the same appears of record in my said Office in ORDER BOOK 67, Page 536.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 2008.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

By: Burda Blondin  
Deputy

OCTOBER TERM

THURSDAY, OCTOBER 26, 2000  
SEVENTH DAY

OCTOBER, 2000

64/347

-At a regular session of the County Commission, continued and held for the County of Wood at the Courthouse thereof, Thursday, October 26, 2000, Present, Holmes R. Shaver, President of said Commission, and Robert K. Tebay, and David A. Couch, Commissioners

The orders and proceedings of the previous session of this Commission, held on Monday, October 23, 2000 and Tuesday, October 24, 2000, were read before this Commission, approved and ordered signed.

IN RE: THE COUNTY COMMISSION REAPPOINTED C. RANDALL LAW TO THE CLAYWOOD PARK PUBLIC SERVICE DISTRICT BOARD. HIS TERM WILL EXPIRE NOVEMBER 1, 2006.

ORDER

On this date, the County Commission of Wood County, upon a motion made by David A. Couch, seconded by Robert K. Tebay and made unanimous by Holmes R. Shaver, reappointed C. Randall Law to the Claywood Park Public Service District Board. Said announcement is pursuant to an Order appearing in Order Book 64, at Page 341 putting Mr. Law in nomination. Said announcement is further pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, which deals with the procedure policy for appointments to boards and authorities. Mr. Law's new term will expire November 6, 2006.

Approved:

THE COUNTY COMMISSION OF WOOD COUNTY

s/Holmes R. Shaver

Holmes R. Shaver, President

s/Robert K. Tebay

Robert K. Tebay, Commissioner

s/David A. Couch

David A. Couch, Commissioner

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission, do now adjourn to meet in regular session, Monday, October 30, 2000, at 9:30 o'clock A.M.

  
President

STATE OF WEST VIRGINIA,  
COUNTY OF WOOD, TO WIT:

I JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody of files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of

IN RE: THE COUNTY COMMISSION REAPPOINTED C. RANDALL LAW TO THE CLAYWOOD  
PARK PUBLIC SERVICE DISTRICT BOARD. HIS TERM WILL EXPIRE  
NOVEMBER 1, 2006

and the same appears of record in my said Office in ORDER BOOK 64, Page 347

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 5th day of MAY, 2008.

JAMIE SIX, CLERK  
WOOD COUNTY COMMISSION

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

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CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
P.O. BOX 127  
PARKERSBURG, WV 26102

DATE: FEBRUARY 12, 2008

TIME: 6:00 P.M.

PLACE: CLAYWOOD PARK OFFICE

ATTENDING: Todd Grinstead, Donna Ingraham, Shayne Brabham, Michael Miller, Edna Summers, Randy Law, Mike Davis with Floyd Brown Group.

Mike Miller, Chairman of the Board, called the meeting to order and said if there were no objections, the District would dispense with the reading of the minutes from the previous meeting. There were no objections. Mike then turned the meeting over to Todd Grinstead, General Manager of the District.

Election of Officers –Edna Summers made a motion for the officers to stay the same as last year. Randy Law seconded. Motion carried. Those officers are Mike Miller, Chairman of the Board, Randy Law, Secretary, Edna Summers, Member and Donna Ingraham, Treasurer.

Disbursements- The January disbursements and accounts payable were approved and initialed by the Commissioners.

Questions or Comments from the Public- There were none.

Plant Upgrade- A motion was made to sign and pay Requisition #19 for \$116,474.12. For invoices from Cerrone Associates and Orders Construction Company and Claywood Park. Motion by Randy and seconded by Edna. Motion carried.

A motion was made by Randy and seconded by Edna to sign the Addendum # 6. Completion date moved and will require engineering longer. Motion carried.

A motion was made by Randy and seconded by Edna to sign Change Order # 10. Motion carried.

Red Hill Sewer Project- Todd said that the DEP has talked with Manning at Cerrone Associates. Finish a few loose ends and will be ready to go to bid end of May.

Riser Ridge/Laurel Fork Project- Todd said that he was informed that we didn't get any of the Small City Grant Money.

System Improvements Project – (New Office, Metering System included.)

Todd said that we are waiting on some paperwork from Steve Hardman so we can go to bid next week. A motion was made by Edna and seconded by Randy to have Mike sign the Bowles Rice McDavid, Graff & Love Bond Counsel Agreement. Motion carried. A motion was made by Edna and seconded by Randy to have Mike sign the accounting service agreement with Bassett & Lowe. Motion carried.

The next board meeting will be March 11, 2008 at the Claywood Park Office. The time will be at 6:00 P.M.

Mike said if there were no further business, the meeting would be adjourned. Adjourned at 7:00 P.M. Motion by Randy and seconded by Edna to adjourn.

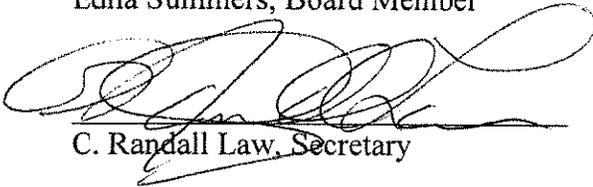
Donna Ingraham, Bookkeeper



Michael Miller, Chairman



Edna Summers, Board Member

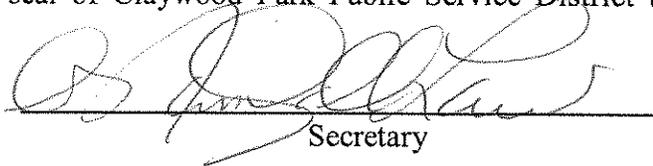


C. Randall Law, Secretary

CERTIFICATION

I, C. Randall Law, Secretary of the Public Service Board of the Claywood Park Public Service District, Wood and Wirt Counties, West Virginia, do hereby certify that the attached is a true and accurate copy of the Minutes of the Annual Organizational Meeting of Claywood Park Public Service District held on February 12, 2008, and that the foregoing remains in full force and effect and has not been amended or repealed.

Given under my hand and seal of Claywood Park Public Service District this 8th day of May, 2008.

  
Secretary

[SEAL]



CLAYWOOD PARK PUBLIC SERVICE DISTRICT

WATER REVENUE BOND  
(WATER SYSTEM IMPROVEMENTS PROJECT)  
SERIES 2008

MINUTES ON ADOPTION OF  
BOND AUTHORIZING RESOLUTION

I, C. Randall Law, Secretary of the Public Service Board of Claywood Park Public Service District, hereby certify that the following is a true and correct excerpt of the minutes of a [special] meeting of the said Public Service Board:

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The Public Service Board of Claywood Park Public Service District met in special session, pursuant to notice duly given, on the 6th day of May, 2008, at Parkersburg, West Virginia, at the hour of 9:00 a.m.

PRESENT: Michael A. Miller  
C. Randall Law  
Edna Summers

Michael A. Miller, Chairman, presided and C. Randall Law acted as Secretary.

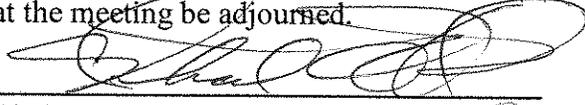
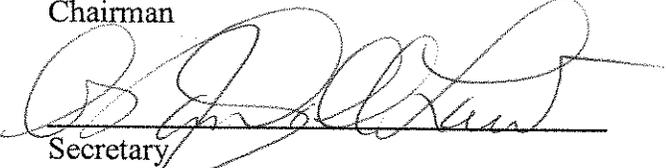
The Chairman announced that a quorum of members was present and that the meeting was open for any business properly before it. Thereupon, the Chairman presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING THE ISSUANCE OF WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS PROJECT), SERIES 2008, OF CLAYWOOD PARK PUBLIC SERVICE DISTRICT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,900,000 ON A PARITY WITH THE SERIES 1975 BOND, THE SERIES 1979 BOND, THE SERIES 1993 B BOND, THE SERIES 1995 BOND, THE SERIES 1997 A BOND, THE SERIES 1998 BOND, THE SERIES 2002 BOND, THE SERIES 2003 BONDS AND THE SERIES 2006 BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO THE EXISTING WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2008 BOND; AUTHORIZING INTERIM CONSTRUCTION FINANCING; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDER OF THE SERIES 2008 BOND AND THE HOLDERS OF THE INTERIM FINANCING NOTES AND FOR

A STATUTORY MORTGAGE LIEN; AND PROVIDING  
WHEN THIS RESOLUTION SHALL TAKE EFFECT

and caused the same to be read and there was discussion. Thereupon, on motion of C. Randall Law seconded by Edna Summers it was unanimously ordered that the said Bond Resolution be adopted and be in full force 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.

  
\_\_\_\_\_  
Chairman  
\_\_\_\_\_  
Secretary

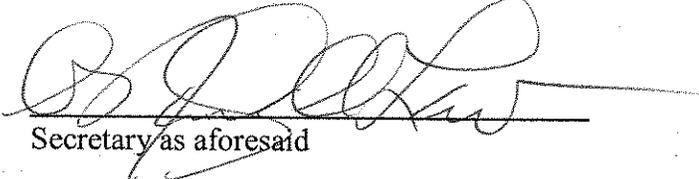
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I further certify that the foregoing action of said Public Service Board remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 8th day of May, 2008.

  
\_\_\_\_\_  
Secretary as aforesaid

[SEAL]



CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
RESOLUTION AUTHORIZING THE ISSUANCE OF A \$5,045,000  
WATER REVENUE BOND ( WATER SYSTEM IMPROVEMENTS PROJECT),  
SERIES 2008

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RESOLUTION AUTHORIZING THE ISSUANCE OF A WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS PROJECT), SERIES 2008, OF CLAYWOOD PARK PUBLIC SERVICE DISTRICT IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,900,000 ON A PARITY WITH THE SERIES 1975 BOND, THE SERIES 1979 BOND, THE SERIES 1993 B BOND, THE SERIES 1995 BOND, THE SERIES 1997 A BOND, THE SERIES 1998 BOND, THE SERIES 2002 BOND, THE SERIES 2003 BONDS, AND THE SERIES 2006 BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO THE EXISTING WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2008 BOND; AUTHORIZING INTERIM CONSTRUCTION FINANCING; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDER OF THE SERIES 2008 BOND AND THE HOLDERS OF THE INTERIM FINANCING NOTES AND FOR A STATUTORY MORTGAGE LIEN; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF CLAYWOOD PARK PUBLIC SERVICE DISTRICT:

#### ARTICLE I

#### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for This Resolution. This Resolution is adopted pursuant to the provisions of Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act"), other applicable provisions of law, and a resolution (the "Prior Resolution") of Claywood Park Public Service District (the "Issuer") adopted on December 27, 1979. The Issuer is a public service district of Wood and Wirt Counties, West Virginia, created pursuant to the Act by the County Commission of Wood County.

Section 1.02. Definitions. All capitalized terms used in this Resolution and not otherwise defined herein shall have the meanings set forth in the Prior Resolution, and in addition the following terms shall have the following meanings herein unless the context otherwise expressly requires:

"Bank" means WesBanco Bank, Inc., Parkersburg, West Virginia, a member of the FDIC, or any other bank which is a member of the FDIC that is subsequently designated by the Issuer to serve as the Bank as set forth in a supplemental resolution adopted by the Issuer.

"Bonds" means collectively the Series 2008 Bond, the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2003 Bonds and the Series 2006 Bonds.

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

"Construction Account" means the Claywood Park Public Service District Construction Account established by Section 4.01 hereof.

"Consulting Engineer" means Cerrone Associates, Inc., Wheeling, West Virginia, or any qualified engineer or firm of engineers which at any time hereafter may be retained by the Issuer as Consulting Engineer for the System.

"FDIC" means the Federal Deposit Insurance Corporation.

"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.

"Herein" means in this Resolution.

"Issuer" means Claywood Park Public Service District, of Wood and Wirt Counties, West Virginia, and, unless the context clearly indicates otherwise includes the Board of the Issuer and any commission, board or department established by the Issuer to operate and maintain the System.

"Notes" means the line of credit notes of the Issuer as defined in Section 3.01 hereof.

"Prior Resolution" means the Resolution adopted by the Claywood Park Public Service District on December 27, 1979, authorizing the Series 1979 Bond.

"Prior Resolutions" means the Prior Resolution, the 1993 B Resolution, the 1995 Resolution, the 1997 A Resolution, the 1998 Resolution, the 2002 Resolution, the 2003 Resolution and the 2006 Resolution.

"Project" means the acquisition and construction of additions and improvements to the existing water system of the Issuer known as the Water System Improvements Project to be financed with the proceeds of the sale of the Series 2008 Bond, as herein provided.

"Project Costs" means all those costs set out in Section 1.03(E) hereof.

"Purchaser" means United States of America as the holder of the Bond.

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

(F) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (A) through (E) above;

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

(H) 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" from Moody's Investors Service, Inc. or Standard & Poor's Corporation: and

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

"Resolution" means collectively this Resolution and any resolution of the Board supplemental hereto.

“Series 1975 Bond” shall have the meaning provided in Section 1.03(G) hereof.

“Series 1979 Bond” shall have the meaning provided in Section 1.03(G) hereof.

“Series 1993 B Bond” shall have the meaning provided in Section 1.03(G) hereof.

“Series 1995 Bond” shall have the meaning provided in Section 1.03(G) hereof.

“Series 1997 A Bond” shall have the meaning provided in Section 1.03(G) hereof.

“Series 1998 Bond” shall have the meaning provided in Section 1.03(G) hereof.

“Series 2002 Bond shall have the meaning provided in Section 1.03(G) hereof.

“Series 2003 Bonds” shall have the meaning provided in Section 1.03(G) hereof.

“Series 2006 Bonds” means the Series 2006 A Bonds, the Series 2006 B Bonds and the Series 2006 C Bonds.

“Series 2006 A Bonds” shall have the meaning provided in Section 1.03(G) hereof.

“Series 2006 B Bonds” shall have the meaning provided in Section 1.03(G) hereof.

“Series 2006 C Bonds” shall have the meaning provided in Section 1.03(G) hereof.

“1993 B Resolution” means the Resolution adopted by the Issuer on December 1, 1993, authorizing the issuance of the Series 1993 B Bond.

“1995 Resolution” means the Resolution adopted by the Issuer on April 3, 1995, authorizing the issuance of the Series 1995 Bond.

“1997 A Resolution” means the Resolution adopted by the Issuer on August 18, 1997, authorizing the issuance of the Series 1997 A Bond.

“1998 Resolution” means the Resolution adopted by the Issuer on January 23, 1998, authorizing the issuance of the Series 1998 Bond.

“2002 Resolution” means the Resolution adopted by the Issuer on December 17, 2002, authorizing the issuance of the Series 2002 Bond.

“2003 Resolution” means the Bond Resolution adopted by the Issuer on May 20, 2003, authorizing issuance of the Series 2003 Bonds.

“2006 Resolution” means the Bond Resolution adopted by the Issuer on June 26, 2006, authorizing issuance of the Series 2006 Bonds.

“Series 2008 Bond” means the \$2,900,000 Water Revenue Bond (Water System Improvements Project), Series 2008, authorized hereby.

“Series 2008 Bond Reserve Account” means the Water Revenue Bond (Water System Improvements Project), Series 2008 Reserve Account created and established by Section 4.02(B) hereof.

“Series 2008 Bond Reserve Requirement” means the maximum amount of principal and interest which will come due on the Series 2008 Bond in the then current or any fiscal year thereafter.

Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

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

(A) The Issuer now has a water system which requires improvements.

(B) The Project is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Claywood Park Public Service District and, accordingly, it is hereby ordered that there be acquired and constructed additions and improvements to the existing water system of the Issuer, particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed with the Secretary of the Issuer. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

(C) It is necessary for the Issuer to issue its water revenue bond, in the principal amount of \$2,900,000 to finance a portion of the costs of such acquisition and construction in the manner hereinafter provided.

(D) The estimated maximum cost of the acquisition and construction of the Project is \$2,900,000, the total amount of which will be obtained from the proceeds of the sale of the Series 2008 Bond herein authorized.

(E) The cost of such construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the acquisition of any necessary property, real or personal, or interest therein; interest on the Series 2008 Bond and the Notes or any note, bond, construction loan, or other indebtedness of the Issuer issued to provide interim financing of the Project in anticipation of the issuance of the Series 2008 Bond prior to, during and for six months after completion of such construction; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and

such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized hereby.

(F) The period of usefulness of the System after completion of the Project is not less than forty years.

(G) The only outstanding obligations of the Issuer which will rank on a parity with the Series 2008 Bond as to liens and source of and security for payment are the following:

Waterworks Revenue Bond, Series 1975, dated March 3, 1975 ("Series 1975 Bond"), issued in the original principal amount of \$685,000, bearing interest at the rate of 5% per annum;

Water Revenue Bond, Series 1979, dated January 7, 1979 ("Series 1979 Bond"), issued in the original principal amount of \$1,100,000, bearing interest at the rate of 5% per annum;

Water Revenue Bond, Series 1993 B, dated December 1, 1993 ("Series 1993 B Bond"), issued in the original principal amount of \$410,000, bearing interest at the rate of 5% per annum;

Water Revenue Bond, Series 1995, dated April 3, 1995 ("Series 1995 Bond"), issued in the original principal amount of \$190,000, bearing interest at the rate of 4.5% per annum;

Water Revenue Bond, Series 1997 A, dated August 18, 1997 ("Series 1997 A Bond"), issued in the original principal amount of \$145,000, bearing interest at the rate of 5.5% per annum; and

Water Revenue Bond, Series 1998, dated January 23, 1998 ("Series 1998 Bond"), issued in the original principal amount of \$750,000, bearing interest at the rate of 5.25% per annum.

Water Revenue Bond, Series 2002, dated December 19, 2002 ("Series 2002 Bond") issued in the original principal amount of \$1,250,000, bearing interest at the rate of 4.625% per annum.

Water Refunding Revenue Bonds, Series 2003, dated June 1, 2003 ("Series 2003 Bonds"), issued in the original principal amount of \$975,000, bearing interest at rates from 3.5% to 5.5% per annum.

Water Revenue Bond, Series 2006 A, dated June 28, 2006 ("Series 2006 A Bond"), issued in the original principal amount of \$4,175,000, bearing interest at the rate of 4.375% per annum.

Water Revenue Bond, Series 2006 B, dated June 28, 2006 ("Series 2006 B Bond"), issued in the original principal amount of \$870,000, bearing interest at the rate of 4.25% per annum.

Water Revenue Bond, Series 2006 C, dated June 28, 2006 ("Series 2006 C Bond"), issued in the original principal amount of \$2,563,000, bearing interest at the rate of 4.375% per annum.

(H) The Issuer has complied with all requirements of the law of West Virginia and the Prior Resolutions relating to authorization of the construction, acquisition and operation of the Project and issuance of the Series 2008 Bond, or will have so complied prior to issuance of the Series 2008 Bond including, among other things, obtaining a certificate of convenience and necessity for the Project from the Public Service Commission of West Virginia by final order, the time for a rehearing and appeal of which shall have been waived or shall have expired. The rates, charges and rules as provided by Article VI hereof shall be in full force and effect.

(I) Under the provisions of Section 4.04 of the Prior Resolution, additional parity bonds may be issued by the Issuer only with the consent of the Purchaser, which consent, in writing, has been obtained and is filed in the office of the Issuer.

(J) Under the provisions of Section 6.08 of the 2003 Resolution, additional parity bonds may be issued by the Issuer only upon receipt of certain certifications by the Independent Accounts and Consulting Engineers, as such terms are defined in the 2003 Resolution, which certifications have been obtained and are filed in the office of the Issuer.

(K) The Purchaser is expected by the Issuer to purchase the entire principal amount of the Series 2008 Bond.

Section 1.04. Resolution to Constitute Contract. In consideration of the acceptance of the Series 2008 Bond by the Purchaser, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Series 2008 Bond.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF SERIES 2006 BONDS

Section 2.01. Authorization of Series 2008 Bond. Subject and pursuant to the provisions hereof, the Series 2008 Bond of the Issuer, to be known as "Water Revenue Bond (Water System Improvements Project), Series 2008", is hereby authorized to be issued in the principal amount of \$2,900,000, for the purpose of financing the costs of the acquisition and construction of the Project.

Section 2.02. Description of Series 2008 Bond. The Series 2008 Bond shall be issued in single form, No. R-1, fully registered to the United States of America and shall be dated on the date of delivery. The Series 2008 Bond shall bear interest from date, payable monthly at the rate of 4.375% per annum, and shall be sold at the par value thereof. The Series 2008 Bond

shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the bond form hereinafter set forth.

Section 2.03. Negotiability, Registration, Transfer and Exchange of Series 2008 Bond. The Series 2008 Bond shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but any Series 2008 Bond, and the right to the principal of, and stated interest on, such Series 2008 Bond, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 2.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever any Series 2008 Bond 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 Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of any Series 2008 Bond shall be permitted to be made after the 15th day next preceding any installment payment date on such Bond.

Section 2.04. Registrar. The Secretary of the Issuer will keep or cause to be kept at the office of the Issuer, sufficient books for the registration and transfer of the Series 2008 Bond, and, upon presentation for such purpose, the Secretary shall register the Series 2008 Bond initially issued pursuant hereto and register the transfer, or cause to be registered, on such books, the transfer of any Series 2008 Bond as hereinbefore provided.

Section 2.05. Execution of Series 2008 Bond. The Series 2008 Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary.

Section 2.06. Mutilated, Destroyed, Stolen or Lost Series 2008 Bond. In case any Series 2008 Bond shall become mutilated, destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new bond of like tenor as the Series 2008 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2008 Bond or in lieu of and substitution for the Series 2008 Bond destroyed, stolen or lost, and upon the holder of such Series 2008 Bond furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2008 Bond so surrendered shall be canceled and held for the account of the Issuer. If such Series 2008 Bond shall have matured or be about to mature, instead of issuing a substitute Series 2008 Bond the Issuer may pay the same, and, if such bond be destroyed, stolen or lost, without surrender thereof.

Section 2.07. Series 2008 Bond not to be Indebtedness of the Members of the Public Service Board of the Issuer. The Series 2008 Bond shall not be or constitute an

indebtedness of the members of the Public Service Board of the Issuer but shall be payable solely from the Net Revenues and from funds in the Revenue Fund.

Section 2.08. Series 2008 Bond Secured by Pledge of Net Revenues, Funds and Unexpended Bond Proceeds. Payment of the Series 2008 Bond shall be secured forthwith by a first lien on the Net Revenues derived from the System and the funds on deposit in the Revenue Fund on a parity with the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2003 Bonds and the Series 2006 Bonds, in addition to the statutory mortgage lien on the System provided for herein. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series 2008 Bond, and to make the payments as hereinafter provided, together with the funds on deposit in the Revenue Fund and the unexpended proceeds of the Series 2008 Bond are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2008 Bond as the same become due.

Section 2.09. Form of Series 2008 Bond. Subject to the provisions hereof, the text of the Series 2008 Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(Form of Series 2008 Bond)

WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS PROJECT),  
SERIES 2008

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

\$ \_\_\_\_\_

No. R-1

Date: \_\_\_\_\_, 2008

CLAYWOOD PARK PUBLIC SERVICE DISTRICT (the "Issuer"), for value received, promises to pay to the order of the United States of America, (the "Purchaser"), or its registered assigns, at its National Finance Office, St. Louis, Missouri, 63103, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of \$ \_\_\_\_\_, plus interest on the unpaid principal balance at the rate of [ \_\_\_\_\_ per cent ( \_\_\_\_\_ %)] per annum. The said principal and interest shall be paid in the following installments on the following dates: Installments of interest only commencing 30 days following delivery of the Series 2008 Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof and \$ \_\_\_\_\_, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Series 2008 Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount hereof is not advanced at the time of closing, the proceeds hereof shall be advanced to Issuer as requested by Issuer and approved by the Purchaser 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 hereon 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. Refunds and extra payments, as defined in the regulations of the Purchaser according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Series 2008 Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the United States of America at any time assigns this Series 2008 Bond and insures the payment thereof, Issuer shall continue to make payments to the United States of America as collection agent for the holder.

While this Series 2008 Bond is held by an insured lender, prepayments made by Issuer may, at the option of the Purchaser, be remitted by the Purchaser to the Holder promptly or, except for final payment, be retained by the Purchaser and remitted to the Holder on either a

calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Purchaser on an annual installment due date basis, shall be the date of the United States Treasury check by which the Purchaser remits the payment to the Holder. The effective date of any prepayment retained and remitted by the Purchaser to the Holder on an annual installment due date basis shall be the date of the prepayment by Issuer and the Purchaser will pay the interest to which the Holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the Holder.

Any amount advanced or expended by the Purchaser for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Purchaser 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 Issuer to the Purchaser without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Purchaser.

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 rates and terms in or near its community for loans for similar purposes and periods of time.

This Series 2008 Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing such funds for financing all or part of the costs of construction of repairs, replacements, expansions and improvements to the waterworks system (the "System") of the Issuer, is payable solely from the Revenues to be derived from the operation of the System after there have been first paid from such Revenues the reasonable current costs of operation and maintenance of the System. This Series 2008 Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation.

Registration of this Series 2008 Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Secretary of the Issuer, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Resolutions hereinafter described, and upon surrender and cancellation of this Series 2008 Bond. Upon such transfer a new Series 2008 Bond or Series 2008 Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Series 2008 Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Secretary of the Issuer.

This Series 2008 Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (herein called the "Act") and Resolutions of the Issuer adopted on December 27, 1979, December 1, 1993, April 3, 1995,

August 18, 1997, January 23, 1998, December 17, 2002, May 20, 2003, June 26, 2006, and \_\_\_\_\_, 2008.

If at any time it shall appear to the Purchaser that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at Purchaser's request, apply for and accept such loan in sufficient amount to repay the Purchaser.

This Series 2008 Bond is given as evidence of a loan to Issuer made or insured by the Purchaser pursuant to the Consolidated Farmers Home Rural Development Act. This Series 2008 Bond shall be subject to the present regulations of the Farmers Home Administration and its successors and assigns and to future regulations not inconsistent with the express provisions hereof.

This Series 2008 Bond is issued on a parity in all respects with the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2003 Bonds, the Series 2006 A Bond, the Series 2006 B Bond and the Series 2006 C Bond described in the Resolutions above described.

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

Attest:

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

By:

\_\_\_\_\_  
Chairman, Public Service Board

[CORPORATE SEAL]

RECORD OF ADVANCES			
AMOUNT	DATE	AMOUNT	DATE
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
<b>TOTAL . . . . \$</b>			

(No writing on this Series 2008 Bond except by the Issuer as Registrar.)

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Secretary or Registrar</u>
_____, 2008	United States of America Post Office Box 678 Morgantown, West Virginia 26505	_____
_____	_____	_____
_____	_____	_____

ASSIGNMENT

Pay to the Order of \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
 \_\_\_\_\_  
 (Title)

## ARTICLE III

### INTERIM CONSTRUCTION FINANCING

Section 3.01. Authorization and General Terms. In order to pay certain Project Costs pending receipt of the gross proceeds of the Series 2008 Bond, the Issuer may issue and sell its Notes, in an aggregate principal amount not to exceed \$2,900,000. The Notes may be issued as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, and as shall be set forth in a resolution supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such date or dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the indenture or supplemental resolution, as applicable.

Section 3.02. Terms of and Security for Notes; Trust Indenture. The Notes, if issued, shall be issued with such terms and secured in the manner set forth in an indenture, if applicable (which indenture in the form to be executed and delivered by the Issuer shall be approved by the supplemental resolution), or supplemental resolution, if no indenture is used.

Section 3.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Series 2008 Bond, the surplus revenues, letter of credit proceeds, if any, and other sources described in an indenture or supplemental resolution. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in an indenture or the supplemental resolution.

Section 3.04. Letters of Credit. As additional security for the Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay the trustee to be appointed by a supplemental resolution, upon presentation by the trustee of certain certificates, the sum or sums set forth therein but not to exceed \$2,900,000 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

## ARTICLE IV

### BOND PROCEEDS; REVENUES AND APPLICATION THEREOF

Section 4.01. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Series 2008 Bond shall be deposited on receipt by the Issuer in the Bank, in a special account hereby created and designated "Claywood Park Public Service District, Water System Improvements Project Construction Account". The moneys in the Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Bank by the pledge of Government Obligations or otherwise in a manner lawful for the securing of deposits of state and municipal funds under West Virginia law. Moneys in the Construction Account shall be expended by the Issuer solely for the purposes provided herein. Until so used, the Purchaser shall have a lien thereon for securing payment of the Series 2008 Bond and the interest thereon.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Construction Account and pay to the Purchaser on or before the due date thereof, such sums as shall be from time to time required to make the monthly installment payments on the Series 2008 Bond if there are not sufficient Net Revenues to make such monthly payment.

Moneys in the Construction Account shall be used solely to pay the Project Costs upon vouchers and other documentation approved by the Purchaser.

If the Issuer shall determine at any time that all funds on deposit in the Construction Account exceed the estimated disbursements on account of the Project for the ensuing ninety (90) days, the Issuer may invest such excess funds in Government Obligations which shall mature not later than eighteen (18) months after the date of such investment. All such investments and the income therefrom shall be carried to the credit of the Construction Account.

When construction of the Project has been completed and all costs have been paid or provision for such payment has been made, any balance remaining in the Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.02. Covenants of the Issuer as to Revenues and Funds. As long as the Series 2008 Bond shall be outstanding and unpaid, or until there shall have been set apart in the Series 2008 Bond Reserve Account hereinafter established, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2008 Bond remaining unpaid, together with interest accrued and to accrue thereon;; the Issuer further covenants with the holder of the Series 2008 Bond as follows:

(A) Revenue Fund. The entire gross revenues derived from the operation of the System, and all parts thereof, and all tap fees received, shall be deposited as collected by the Issuer in the Revenue Fund established by the Prior Resolution. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Resolution and herein and shall be

kept separate and apart from all other funds of the Issuer and used only for the purposes and in the manner provided herein. The holder of the Series 2008 Bond shall have a lien on and a pledge, hereby granted, of all the Net Revenues of the System, as herein provided, and a statutory mortgage lien upon the System, granted and created by the Act, as long as the Series 2008 Bond remains unpaid, on a parity in all respects with the holders of the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2003 Bonds, the Series 2006 A Bond, the Series 2006 B Bond and the Series 2006 C Bond.

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

(1) The Issuer shall first each month transfer from the Revenue Fund and pay into the Operation and Maintenance Fund established by the 1967 Resolution such sum as the Issuer may determine, in accordance with its budget, to be necessary to pay all current Operating Expenses.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) pay to the National Finance Office designated in the Series 2008 Bond the amount required to pay the interest on the Bonds, other than the Series 2003 Bonds, and to amortize the principal of the Bonds, other than the Series 2003 Bonds, over the lives of the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2006 A Bond, the Series 2006 B Bond, the Series 2006 C Bond and the Series 2008 Bond, respectively; (ii) beginning on the first day of that month which is 6 months prior to the first interest payment date on the Series 2003 Bonds, remit to the Commission for deposit in the Series 2003 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2003 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 2003 Bonds Sinking Fund and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date, and provided further, that the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2003 Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2003 Bonds deposited therein and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Series 2003 Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2003 Bonds Sinking Fund, and (iii) beginning on the first day of that month which is 12 months prior to the first principal payment date or mandatory redemption date of the Series 2003 Bonds, remit to the Commission for deposit in the Series 2003 Bonds Sinking Fund, and in the Series 2003 Bonds Redemption Account therein in the case of Term Bonds which are to be redeemed, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2003 Bonds on the next ensuing principal payment date or mandatory redemption date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 2003 Bonds Sinking Fund and the next ensuing annual principal payment date or mandatory redemption date is less than or greater than 12 months, then such

monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing annual principal payment date or mandatory redemption date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2003 Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously deposit pro rata (i) in the Reserve Fund established by the 1967 Resolution (the "Reserve Fund"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 1975 Bonds and Series 1979 Bonds outstanding until the amount in the Reserve Fund is equal to the Minimum Reserve as defined in the Prior Resolution (the "Minimum Reserve"); (ii) in the Series 1993 B Bond Reserve Account established by the 1993 B Resolution (the "Series 1993 B Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 1993 B Bond until the amount in the Series 1993 B Bond Reserve Account is equal to the Series 1993 B Bond Reserve Requirement as defined in the 1993 B Resolution (the "Series 1993 B Bond Reserve Requirement"); (iii) in the Series 1995 Bond Reserve Account established by the 1995 Resolution (the "Series 1995 Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 1995 Bond until the amount in the Series 1995 Bond Reserve Account is equal to the Series 1995 Bond Reserve Requirement as defined in the 1995 Resolution (the "Series 1995 Bond Reserve Requirement"); (iv) in the Series 1997 A Bond Reserve Account established by the 1997 A Resolution (the "Series 1997 A Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 1997 A Bond until the amount in the Series 1997 A Bond Reserve Account is equal to the Series 1997 A Bond Reserve Requirement as defined in the 1997 A Resolution (the "Series 1997 A Bond Reserve Requirement"); (v) in the Series 1998 Bond Reserve Account established by the 1998 Resolution ("the Series 1998 Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 1998 Bond until the amount in the Series 1998 Bond Reserve Account is equal to the Series 1998 Bond Reserve Requirement as defined in the 1998 Resolution (the "Series 1998 Bond Reserve Requirement"); (vi) in the Series 2002 Bond Reserve Account established by the 2002 Resolution (the "Series 2002 Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 2002 Bond until the amount in the Series 2002 Bond Reserve Account is equal to the Series 2002 Bond Reserve Requirement as defined in the 2002 Resolution (the "Series 2002 Bond Reserve Requirement"); (vii) in the Series 2003 Bonds Reserve Account established by the 2003 Resolution (the "Series 2003 Bonds Reserve Account"), if not fully funded upon the issuance of the Series 2003 Bonds, one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 2003 Bond until the amount in the Series 2003 Bonds Reserve Account is equal to the Series 2003 Bonds Reserve Requirement, as defined in the 2003 Resolution (the "Series 2003 Bonds Reserve Requirement"); (viii) in the Series 2006 A Bond Reserve Account established by the 2006 Resolution (the "Series 2006 A Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 2006 A Bond until the amount in the Series 2006 A Bond Reserve Account is equal to the Series

2006 A Bond Reserve Requirement as defined in the 2006 Resolution (the "Series 2006 A Bond Reserve Requirement"); (ix) in the Series 2006 B Bond Reserve Account established by the 2006 Resolution (the "Series 2006 B Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 2006 B Bond until the amount in the Series 2006 B Bond Reserve Account is equal to the Series 2006 B Bond Reserve Requirement as defined in the 2006 Resolution (the "Series 2006 B Bond Reserve Requirement"); (x) in the Series 2006 C Bond Reserve Account established by the 2006 Resolution (the "Series 2006 C Bond Reserve Account"), one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 2006 C Bond until the amount in the Series 2006 C Bond Reserve Account is equal to the Series 2006 C Bond Reserve Requirement as defined in the 2006 Resolution (the "Series 2006 C Bond Reserve Requirement"); and (xi) beginning with and including the month in which the first principal installment is due upon the Series 2008 Bond, transfer from the Revenue Fund and deposit in an account hereby designated the "Series 2008 Bond Reserve Account" which is hereby established with the Commission, one-twelfth of one-tenth of the maximum annual aggregate amount of interest and principal which will fall due on the Series 2008 Bond until the amount in the Series 2008 Bond Reserve Account is equal to the Series 2008 Bond Reserve Requirement.

After the Minimum Reserve has been accumulated in the Reserve Fund, the Series 1993 B Bond Reserve Requirement has been accumulated in the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Requirement has been accumulated in the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Requirement has been accumulated in the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Requirement has been accumulated in the Series 1998 Bond Reserve Account, the Series 2002 Bond Reserve Requirement has been accumulated in the Series 2002 Bond Reserve Account, the Series 2003 Bonds Reserve Requirement has been accumulated in the Series 2003 Bonds Reserve Account, the Series 2006 A Bond Reserve Requirement has been accumulated in the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Requirement has been accumulated in the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Requirement has been accumulated in the Series 2006 C Bond Reserve Account, and the Series 2008 Bond Reserve Requirement has been accumulated in the Series 2008 Bond Reserve Account, respectively, the Issuer shall deposit monthly pro rata into the Reserve Fund, the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account, the Series 2002 Bond Reserve Account, the Series 2003 Bonds Reserve Account, the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Account and the Series 2008 Bond Reserve Account such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bonds and for payment of Operating Expenses of the System, as shall be required to maintain the Minimum Reserve, the Series 1993 B Bond Reserve Requirement, the Series 1995 Bond Reserve Requirement, the Series 1997 A Bond Reserve Requirement, the Series 1998 Bond Reserve Requirement, the Series 2002 Bond Reserve Requirement, the Series 2003 Bond Reserve Requirement; the Series 2006 A Bond Reserve Requirement, the Series 2006 B Bond Reserve Requirement, the Series 2006 C Bond Reserve Requirement and the Series 2008 Bond Reserve Requirement, respectively.

Moneys in the Reserve Fund shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 1975 Bond and the Series 1979 Bond, as the same shall become due, for prepayments of installments on the Series 1975 Bond and the Series 1979 Bond or for mandatory prepayment of the Series 1975 Bond and the Series 1979 Bond, as provided in the Prior Resolution, the 1993 B Resolution, the 1995 Resolution, the 1997 A Resolution, the 1998 Resolution, the 2002 Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 1993 B Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 1993 B Bond as the same shall become due, for prepayment of installments on the Series 1993 B Bond or for mandatory prepayment of the Series 1993 B Bond as provided in the Prior Resolution, the 1993 B Resolution, the 1995 Resolution, the 1997 A Resolution, the 1998 Resolution, the 2002 Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 1995 Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 1995 Bond as the same shall become due, for prepayment of installments on the Series 1995 Bond or for mandatory prepayment of the Series 1995 Bond as provided in the Prior Resolution, the 1995 Resolution, the 1997 A Resolution, the 1998 Resolution, the 2002 Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 1997 A Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 1997 A Bond as the same shall become due, for prepayment of installments on the Series 1997 A Bond or for mandatory prepayment of the Series 1997 A Bond as provided in the Prior Resolution, the 1997 A Resolution, the 1998 Resolution, the 2002 Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 1998 Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the 1998 Bond as the same shall become due, for prepayment of installments on the 1998 Bond or for mandatory prepayment of the 1998 Bond as provided in the Prior Resolution, the 1998 Resolution, the 2002 Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 2002 Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 2002 Bond as the same shall become due, for prepayment of installments on the Series 2002 Bond or for mandatory prepayment of the Series 2002 Bond as provided in the Prior Resolution, the 2002 Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 2003 Bonds Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 2003 Bonds as the same shall become due, for prepayment of installments on the Series 2003 Bonds or for mandatory prepayment of the Series 2003 Bonds as provided in the Prior Resolution, the 2003 Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 2006 A Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 2006 A Bond as the same shall become due, for prepayment of installments on the Series 2006 A Bond or for mandatory prepayment of the Series 2006 A Bond as provided in the Prior Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 2006 B Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 2006 B Bond as the same shall become due, for prepayment of installments on the Series 2006 B Bond or for mandatory prepayment of the Series 2006 B Bond as provided in the Prior Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 2006 C Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 2006 C Bond as the same shall become due, for prepayment of installments on the Series 2006 C Bond or for mandatory prepayment of the Series 2006 C Bond as provided in the Prior Resolution, the 2006 Resolution and herein, and for no other purpose.

Moneys in the Series 2008 Bond Reserve Account shall be used solely to make up any deficiency for monthly installments required to be paid on the Series 2008 Bond as the same shall become due, for prepayment of installments on the Series 2008 Bond or for mandatory prepayment of the Series 2008 Bond as provided in the Prior Resolution and herein, and for no other purpose.

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

Whenever the money in the Series 2008 Bond Reserve Account shall be sufficient to prepay the Series 2008 Bond in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2008 Bond at the earliest practical date and in accordance with applicable provisions hereof.

The Bank (and any successor appointed by the Issuer) is hereby designated as Fiscal Agent for the administration of the Reserve Fund, the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account and the Series 2002 Bond Reserve Account as herein provided, and all amounts required therefor will be deposited by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

The Commission is hereby designated as Fiscal Agent for the administration of the Series 2003 Bonds Reserve Account, the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Account and the 2008 Bond Reserve Account as herein provided, and all amounts required therefor will be deposited by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

All the funds provided for in this Section shall constitute trust funds and shall be used solely for the purposes and in the order provided herein, and until so used, the Purchaser and the holders of the Series 2003 Bonds shall have a lien thereon for further securing payment of the Bonds and the interest thereon, provided that, with respect to the respective sinking funds and reserve accounts described in this Section, only the holder of the respective series of Bonds payable therefrom or secured thereby shall have a lien thereon. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, by the pledge of Government Obligations or otherwise in a manner lawful for securing deposits of state and municipal funds under the laws of the State of West Virginia. The Bank or the Commission shall not be a trustee as to such funds.

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

The Bank shall keep the moneys in the Reserve Fund, the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account and the Series 2002 Bond Reserve Account invested and reinvested to the fullest extent practicable in Qualified Investments. Earnings upon moneys in the Reserve Fund, the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account and the Series 2002 Bond Reserve Account, as long as the Minimum Reserve, the Series 1993 B Bond Reserve Requirement, the Series 1995 Bond Reserve Requirement, the Series 1997 A Bond Reserve Requirement, the Series 1998 Bond Reserve Requirement, and the Series 2002 Bond Reserve Requirement are on deposit and maintained therein, shall be paid annually in January into the Revenue Fund by the Bank.

The Commission shall keep the moneys in the Series 2003 Bonds Reserve Account, the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Account and the Series 2008 Bond Reserve Account invested and reinvested to the fullest extent possible in Qualified Investments. Earnings upon moneys in the Series 2003 Bonds Reserve Account, the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Account and the Series 2008 Bond Reserve Account, as long as the Series 2003 Bonds Reserve Requirement, the Series 2006 A Bond Reserve Requirement, the Series 2006 B Bond Reserve Requirement, the Series 2006 C Bond Reserve Requirement and the Series 2008 Bond Reserve Requirement are on deposit and maintained therein, shall be paid annually in January into the Revenue Fund by the Commission.

(C) Change of Bank as Fiscal Agent. The Issuer may designate another bank insured by FDIC as Fiscal Agent for the administration of the Reserve Fund, the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account and the Series 2002 Bond Reserve Account if the Bank should cease for any reason to serve or if the Board determines by resolution that the Bank or its successor should no longer serve as Fiscal Agent. Upon any such change, the Board will cause note of the change to be sent by registered or certified mail to the Purchaser.

(D) Additional User Contracts. The Issuer has at least 3,492 *bona fide* users of the System.

## ARTICLE V

### GENERAL COVENANTS

Section 5.01. General Statement. As long as the Series 2008 Bond shall be outstanding and unpaid, or until there shall have been set apart in the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account, the Series 2002 Bond Reserve Account, the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Account and the Series 2008 Bond Reserve Account a sum sufficient to prepay the entire principal of the Bonds, other than the Series 2003 Bonds, remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Until the payment in full of the principal of and interest on the Notes when due, and to the extent they do not materially adversely affect the holders of the Bonds, the covenants, agreements and provisions contained herein shall, where applicable, also inure to the benefit of the holders of the Notes and the trustee therefor and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by the trustee or any holder or holders of the Notes as prescribed in the indenture or supplemental resolution; provided, that Section 5.05 shall not be applied to the Notes.

Section 5.02. Covenants of Prior Resolution Applicable. All covenants and provisions of the Prior Resolution except for any and all covenants relating to arbitrage and those covenants specifically herein modified shall apply equally and ratably to the Series 2008 Bond. Without limiting the generality of the foregoing sentence, such covenants and provisions of the Prior Resolution shall remain fully effective notwithstanding the payment of the Series 1979 Bonds authorized by the Prior Resolution.

Section 5.03. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall 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 or Notes shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 5.04. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds. Such rates shall also be sufficient to make the debt service payments on the

Bonds, to make all payments required herein into the Reserve Fund, the Series 1993 B Bond Reserve Account, the Series 1995 Bond Reserve Account, the Series 1997 A Bond Reserve Account, the Series 1998 Bond Reserve Account, the Series 2002 Bond Reserve Account, the Series 2003 Bonds Reserve Account, the Series 2006 A Bond Reserve Account, the Series 2006 B Bond Reserve Account, the Series 2006 C Bond Reserve Account and the Series 2008 Bond Reserve Account and to pay all the necessary expenses of operating and maintaining the System during such fiscal year, and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 5.05. Statutory Mortgage. For the further protection of the holder of the Series 2008 Bond, 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 2008 Bond for the benefit of the holder of the Series 2008 Bond on a parity with the Series 1975 Bonds, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2003 Bonds and the Series 2006 Bonds.

Section 5.06. Conditions Precedent Fulfilled; Interim Financing. 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 2008 Bond and the Notes, if issued, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which shall have been waived or shall have expired. The Notes, if issued, will not be payable from the Net Revenues, but shall be payable from proceeds of the Series 2008 Bond, surplus revenues and proceeds from a letter of credit, if any, all as shall be set forth in the indenture or a supplemental resolution authorizing the Notes.

Section 5.07. Investments. The Issuer shall invest and reinvest, and hereby instructs the Bank and the Commission to invest and reinvest, in Qualified Investments any moneys held as part of the funds and accounts created by this Resolution, other than the Revenue Fund, to the fullest extent possible subject to applicable laws and this Resolution, and the need for such moneys for the purposes set forth herein, and the specific restrictions and provisions set forth in this Section 5.07. The Issuer may direct the Bank and the Commission in writing as to what particular permitted investments shall be made.

Except as provided herein and in the indenture, if any, any investment shall be held in and at all times be deemed a part of the fund or account in which the moneys and investments are held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the corresponding fund or account. The Bank or 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 any loss on such liquidation. The Issuer may invest funds on deposit with the Bank through the trust department of the Bank. The Bank or the Commission shall not be responsible for any losses from such investments, except losses due to its own gross negligence or willful misconduct.

Section 5.08. Wetlands Covenant. The Issuer shall not use any Series 2008 Bond proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. Failure to comply with this covenant shall constitute an Event of Default under Section 4.07 of the Prior Resolution.

## ARTICLE VI

### RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. The schedule of rates and charges for the services and facilities of the extension to the System initially shall be those contained in the Commission Order of the Public Service Commission of West Virginia which became final November 28, 2007, and such rates are hereby adopted.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. Modification or Amendment. No modification or amendment of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the prior consent in writing of the Purchaser.

Section 7.02. Delivery of Series 2008 Bond. The Chairman, Secretary and Treasurer of the Issuer are hereby authorized and directed to cause the Series 2008 Bond No. R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.03. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2008 Bond.

Section 7.04. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed, but excluding the Loan Resolution (Form FmHA 442-47) and the Prior Resolutions.

Section 7.05. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.06. 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 final enactment and passage of this Resolution do exist, have

happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, the Secretary and the Treasurer of the Board were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such service.

This Resolution shall become effective immediately upon its adoption.

Adopted May 6, 2008.

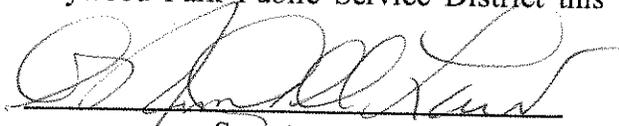


Chairman, Public Service Board

CERTIFICATION

I, C. Randall Law, Secretary of the Public Service Board of the Claywood Park Public Service District, Wood and Wirt Counties, West Virginia, do hereby certify that the attached is a true and accurate copy of the Resolution adopted by the Public Service Board on May 6, 2008, authorizing the Claywood Park Public Service District's Water Revenue Bond (Water System Improvements Project), Series 2008.

Given under my hand and seal of Claywood Park Public Service District this 8th day of May, 2008.

  
Secretary

[SEAL]



Cerrone Associates, Inc.  
401 Main Street  
Wheeling, WV 26003  
Phone: 304.232-5550  
Fax: 304.233.2512  
E-mail: mail@cerrone1.com



**CERRONE**  
Associates • Consulting Engineers

**CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
\$2,900,000 WATER REVENUE BOND  
(WATER SYSTEM IMPROVEMENTS PROJECT)  
SERIES 2008**

**ENGINEER'S CERTIFICATE**

I, Manning H. Frymier, Registered Professional Engineer, West Virginia Registration No. 8497, of Cerrone Associates, Inc., Consulting Engineers, Wheeling, West Virginia, hereby certify that my firm is engineer for the construction of the water system improvements (herein called the "Project") of the Claywood Park Public Service District to be constructed in Wood County, West Virginia, which construction is being financed by the above-captioned Water Revenue Bond of the District.

I further certify that the Project will, to the best of my knowledge, be constructed in accordance with plans and specifications prepared by my firm and that such system is situate wholly or chiefly within the boundaries of said District.

I further certify that the Project is adequate for the purpose for which it was designed and that all necessary governmental approvals and permits for the construction thereof have been obtained or can be obtained.

WITNESS my signature on this 8th day of May, 2008.

CERRONE ASSOCIATES, INC.

By:

  
Manning H. Frymier

## **BASSETT & LOWE**

CERTIFIED PUBLIC ACCOUNTANTS

1156 SOUTH MAIN STREET

MILTON, WEST VIRGINIA 25541

Phone: (304) 743-5573 FAX: (304) 743-1150

Toll Free: 1-800-720-9629

e-mail: [rbassett@bassettlowe.com](mailto:rbassett@bassettlowe.com)

e-mail: [rlowe@bassettlowe.com](mailto:rlowe@bassettlowe.com)

### **CLAYWOOD PARK PUBLIC SERVICE DISTRICT WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS PROJECT) SERIES 2008**

May 8, 2008

United States Department of Agriculture  
Rural Development  
Federal Building  
75 High Street, Room 320  
Morgantown, West Virginia 26525

Bowles Rice McDavid Graff & Love LLP  
600 Quarrier Street  
Charleston, West Virginia 25301

Claywood Park Public Service District  
Post Office Box 127  
Parkersburg, West Virginia 26102

Ladies and Gentlemen:

Based upon the rates and charges approved in the Recommended Decision of the Public Service Commission of West Virginia entered on November 8, 2007, which became the Final Order of the Public Service Commission of West Virginia on November 28, 2007, in Case No. 07-0850-PWD-CN, for the waterworks system (the "System") of the Claywood Park Public Service District (the "Issuer"), and projected operation and maintenance expenses and anticipated customer usage as furnished to us by the Issuer, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the System, will pay all repair, operation and maintenance expenses and leave a balance each year equal to at least 110% of the maximum amount required in any year for debt service on the Issuer's Water Revenue Bond (Water System Improvements Project) Series 2008 (the "Bond"), to be issued to the United States Department of Agriculture and all other obligations secured by or payable from the revenues of the System on a parity with the Bond, including the Issuer's Waterworks Revenue Bond, Series 1975, the Water Revenue Bond, Series 1979, the Water Revenue Bond, Series 1993 B, the Water Revenue Bond, Series 1995, the Water Revenue Bond, Series 1997 A, the Water Revenue Bond, Series 1998, the Water Revenue Bond, Series 2002, the Water Refunding Revenue Bonds, Series 2003, the Water Revenue Bond, Series 2006 A, the Water Revenue

Bond, Series 2006 B and the Water Revenue Bond, Series 2006 C (collectively as the "Prior Bonds").

Further, based upon information (including financial information) provided to us by the Issuer, and further based upon the certificate of Cerrone Associates, Inc., Consulting Engineers for the Issuer, which certificate is attached hereto, it is our opinion that the Net Revenues actually derived from the System during 12 consecutive months within the 18 months immediately preceding the date hereof, plus 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 Bonds, are not less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Prior Bonds and the Bonds.

The Net Revenues referenced above in the immediately preceding paragraph have been adjusted by adding to such Net Revenues the amount of \$263,800, which is the amount of the additional Net Revenues which, in our opinion, would have been received during the 12 consecutive months within the 18 months immediately preceding the date hereof on account of the increased rates and charges for the Issuer's waterworks system approved in the Recommended Decision of the Public Service Commission of West Virginia entered on November 8, 2007, which became the Final Order of the Public Service Commission of West Virginia on November 28, 2007, in Case No. 07-0850-PWD-CN, the period for appeal of which has expired prior to the date hereof, if said rates had been in effect during the entirety of the said 12 consecutive month period.

Very truly yours,



Bassett & Lowe

Cerrone Associates, Inc.  
401 Main Street  
Wheeling, WV 26003  
Phone: 304.232-5550  
Fax: 304.233.2512  
E-mail: mail@cerrone1.com



**CERRONE**  
Associates • Consulting Engineers

**CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND  
(WATER SYSTEM IMPROVEMENTS PROJECT)  
SERIES 2008**

**CERTIFICATE OF CONSULTING ENGINEER**

The undersigned authorized representative of Cerrone Associates, Inc., Consulting Engineers for the Claywood Park Public Service District (the "Issuer"), hereby certifies as follows:

We, having conducted such investigation as we have deemed necessary, believe the projected operation and maintenance expenses and anticipated customer usage referenced in the Certificate of Bassett & Lowe, Certified Public Accountants, dated May 8, 2008 (the "Certificate"), to which this Certificate is to be attached, are reasonable and accurate.

Dated: May 8, 2008.

CERRONE ASSOCIATES, INC.

By: Manning J. Ymueli  
Its: President





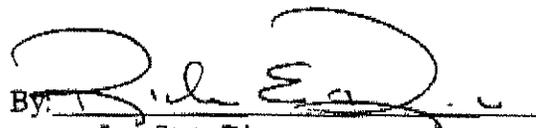
United States Department of Agriculture  
Rural Development  
West Virginia State Office

**CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 2008**

**TO WHOM IT MAY CONCERN:**

United States of America acting through the Rural Utilities Service, United States Department of Agriculture (formerly the United States of America, Farmers Home Administration), as sole present holder of the Claywood Park Public Service District (the "Issuer") (i) Waterworks Revenue Bond, Series 1975 (the "Series 1975 Bond"); (ii) Water Revenue Bond, Series 1979 (the "Series 1979 Bond"); (iii) Water Revenue Bond, Series 1993 B (the "Series 1993 B Bond"); (iv) Water Revenue Bond, Series 1995 (the "Series 1995 Bond"); (v) Water Revenue Bond, Series 1997 A (the "Series 1997 A Bond"); (vi) Water Revenue Bond, Series 1998 (the "Series 1998 Bond"); (vii) Water Revenue Bond, Series 2002 (the "Series 2002 Bond"); (viii) Water Revenue Bond, Series 2006 A (the "Series 2006 A Bond"); (ix) Water Revenue Bond, Series 2006 B (the "Series 2006 B Bond"); and (x) Water Revenue Bond, Series 2006 C (the "Series 2006 C Bond"), hereby consents to the issuance of the Issuer's Water Revenue Bond, Series 2008 in an aggregate principal amount not to exceed \$2,900,000 (the "Series 2008 Bond"), on parity with respect to liens, pledges and sources of and security for payment, with the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2006 A Bond, the Series 2006 B Bond and the Series 2006 C Bond (collectively, the "Prior Bonds"), together with the Issuer's Water Refunding Revenue Bonds, Series 2003 (the "Series 2003 Bonds"), under the terms of the Bond Resolution authorizing such Series 2008 Bond and hereby waives any requirements imposed by the Prior Bonds or the respective Resolutions authorizing the same, regarding the issuance of parity bonds which are not met by the Series 2008 Bond; and agrees that the Prior Bonds, the Series 2003 Bonds and the Series 2008 Bond will be on parity and of equal priority with each other as to their lien on the net revenues of the Claywood Park Public Service District water system and the statutory mortgage lien thereon.

Dated this 8<sup>th</sup> day of May, 2008.

By:   
Its: State Director

75 High Street Federal Building • Suite 320 • Morgantown, WV 26505-7500  
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

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PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

FINAL

11/28/2007

Entered: November 8, 2007

CASE NO. 07-0850-PWD-CN

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

Application for a Certificate of Convenience and Necessity to construct, operate and maintain water system improvements to serve customers in Wood and Wirt Counties and the Mineral Wells Public Service District and the Town of Elizabeth (resale customers).

RECOMMENDED DECISION

On May 15, 2007, the Claywood Park Public Service District (Utility) filed an application for a certificate of convenience and necessity to construct certain improvements to its water system serving customers in Wood and Wirt Counties. The \$2,900,000 project will be financed by a proposed loan from USDA Rural Utility Service.

On May 15, 2007, the Commission required the Utility to publish notice of its filing.

On June 27, 2007, the Commission referred the matter requiring a decision on or before December 11, 2007.

The Commission received numerous letters of protest concerning the petition.

By Procedural Order issued August 7, 2007, the matter was set for hearings on October 2, 2007 at 1:30 p.m. for evidence and public comment and at 7:00 p.m. for additional public comment.<sup>1</sup>

The hearings were held as scheduled. Steven R. Hardman, Esquire, appeared on behalf of the Utility. Ronald Robertson, Jr., Esquire, appeared on behalf of Staff.

<sup>1</sup>Citations to the 1:30 p.m. hearing are "Tr." Citations to the 7:30 p.m. hearing are "Tr. II."

## PUBLIC COMMENT

Gregory Meyers believes that a 60% increase is unrealistic and unaffordable.<sup>2</sup> He believes that any efficiency gains should be able to pay for themselves. Mr. Meyers believes that, in the market economy, competition keeps down rates but utilities unfortunately do not have competition. Mr. Meyers wondered whether there might be homeland security grants to pay for the project. (Tr. II 13, 14, 15).

Peggy Squire is unhappy with the large differences in rate schedules for various areas served by the Utility. Ms. Squire lives in the highest rate area and is troubled that the 18% will be a lot more money for that area than any of the other areas. Ms. Squire looks forward to the day when the rates for the Utility will be unified. (Tr. II 15, 16, 17, 22, 23).

Bob Enoch believes there are many elderly people served by the Utility who will be hurt severely by the increases. Mr. Enoch believes that the Utility's rates are already very high and the increase will create hardships. (Tr. II 23, 24).

Pam Wilson believes that the Utility's rates are among the highest in the state. (Tr. II 25, 26). Ms. Wilson indicated that she had called all around to verify that the Utility's rates were the highest in the state.<sup>3</sup> She was offended by the proposed significant increase over and above the existing rates. (Tr. II 25, 26).

Stephanie Detrio believes the Utility should defer its new operation center given the significant rate increases that are already in the works. She believes that the automated meter reading system may cost more than it is worth to the Utility and its customers. Ms. Detrio is concerned with cost overruns. She would like to see if earmarks or appropriations through Congress could help pay for part of the project. (Tr. II 26, 27, 28).

Kay Hill believes the new operation center is unnecessary. She believes that the 66% increase is outrageous regardless of how long it takes to go into effect. (Tr. II 29, 30).

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<sup>2</sup>The Utility recently upgraded its water treatment plant from 1,200 gallons a minute to 3,000 gallons a minute. (Tr. 52). The old treatment plant had been running almost 24 hours a day and the Health Department required an upgrade. (Tr. 52, 53). Much of the rate increase complained of by the customers was related to the treatment plant which had recently been completed and the new rates approved in the prior certificate case were just recently being collected by the Utility.

<sup>3</sup>Actually the highest water rates in the State are the rates of the Timberland Four Seasons Utility, Inc., with rates of \$141.40 for a 4,500 gallon customer. There are seventeen other water utilities in the State with rates above \$50 for a 4,500 gallon customer. The largest private water provider in the State, West Virginia American Water Company has rates of \$50.27 for a 4,500 gallon customer. See Water Utility Cost Rankings as of November 2, 2007 on the Commission's website.

Ireda Barker is concerned because she only receives social security. Ms. Barker is also concerned that the rate increase will impact her sewer bill. (Tr. 29, 30).

Haskell Sinclair tried for 16 years to get water from various utilities. He does believe that the Utility's current rate proposal is beyond reason. A water tank near his property constantly overflows because of a problem with an altitude valve. Mr. Sinclair reasoned that treatment must not cost much, since the Utility is willing to waste water. Mr. Sinclair believes that it is unfair that certain resale customers get the water at lower rates. (Tr. 30, 31, 32).

Bill Yearego is concerned that the cost-of-living continually increases. He believes that, when the system grows, the rates go up. Mr. Yearego believes the water department is well operated, but, at some point, the rate becomes too high to be affordable. (Tr. 32, 33, 34).

Rebecca Newell, who pays more than twice what her mother pays for water service, lives only about six miles away. Ms. Newell thinks her meter reader does a good job. She was concerned when a meter was recently replaced because it was dead, believing that she was still charged for water usage. Her bill has continually gone up a little bit each month. Ms. Newell would not mind a small rate increase, but objects to the size of the rate increase. She believes that the high rates will keep people out of the area. (Tr. 34, 35, 36, 37, 38).

Olan Jackson believes that the new operation system is a "bunch of bull." He believes the Utility could use the existing office building. He further believes that the radio meters are unnecessary. He supports continued bi-monthly billing. He believes the rates proposed are simply too high to be affordable. Approving such high rates will cause more crime because people will steal in order to pay their utility bills. (Tr. 103, 104, 105).

Tom Wriston believes that his sewer bill will go up if the water rates increase. (Tr. 105, 106).

#### EVIDENCE

Manning Frymier, the Director of Engineering for Cerrone Associates, was employed by the Utility related to this project. (Tr. 40). The project is made up of three facets. (Tr. 41).

The first facet includes improvements to the Murphy Town-Loomis Ridge portion of the system, where many of the distribution lines are inadequately sized. (Tr. 41). This area of the Utility's system serves the northern and eastern portions of the territory, including Deer Walk and Mount Wood Park. (Tr. 41). Due to numerous extensions in that area, the system is taxed to the point where it needs improvements in order to remain reliable and to reduce hydraulic bottlenecks. (Tr. 41). Many of the lines in that area were installed roughly 30 years ago. (Tr. 42).

The Murphy Town booster station is one of the big problems in that area. It has two pumps rated at 200 gallons per minute. (Tr. 42). Both pumps operate roughly 20 hours per day to meet the demand. (Tr. 42).

Such constant operation leaves little room for increased water production or a chance to recover from a major outage or line breakage. (Tr. 42). One of the pumps shutting down would mean that the system would lose its ability to serve the customers for a significant period of time. (Tr. 42, 43).

The Murphy Town-Loomis Ridge portion of the project includes paralleling existing 4" lines with a new 6" line from Route 50 to Loomis Ridge Road. (Tr. 43). From Steel Well Road to the Murphy Town booster station, an existing 6" line will be paralleled with a new 8" line. (Tr. 43). The entire Murphy Town booster station will be decommissioned and replaced with a new booster station with 400 gallons a minute pumps. (Tr. 43). The existing Loomis Ridge tank will be repainted. It has been 25 years or more since that tank has been painted. (Tr. 43, 44). A new tank will be placed beside the existing tank providing additional capacity of 380,000 gallons. (Tr. 44).

Mr. Frymier believes that, with these planned additions in the Murphy Town area, the northern and eastern portion of the Utility system will be in good shape for a number of years to come. (Tr. 44). Mr. Frymier believes that these upgrades will prevent outages. (Tr. 45). He believes that, if the tank is not repainted, the Utility may lose the tank entirely. (Tr. 45). The Murphy Town improvements cost \$610,000, or about 30% of the cost. (Tr. 47).

The second facet of the project involves building a new operations center for the Utility on Route 47 and replacing the existing office complex which was built about 32 years ago. (Tr. 45). Mr. Frymier indicated that the Utility had basically outgrown its previous facility. (Tr. 45). The new facility will allow the Utility to centralize its operations on the same property as the water treatment plant. (Tr. 46).

The operation center costs \$810,000 or roughly 40% of the total project. (Tr. 47). The proposed office complex will include a large meeting room. (Tr. 47). Mr. Frymier described the steel building, indicating that it was chosen to get the maximum square footage for the minimum cost. (Tr. 48).

The third facet of the project is an automated meter-reading system. (Tr. 49). The Utility has about 3,600 to 3,800 water meters on the system that are touch-read. (Tr. 49). The project would replace all meters with meters having radio-reading capabilities. (Tr. 51). A radio-read system allows a meter reader to stay in the vehicle and read the meters by just driving by the area. (Tr. 49). The automated meter-reading system will make meter reading more accurate and safer, since the Utility employees do not have to leave the car on the busy roads in the territory, and will save significant employee time. (Tr. 49, 50). The meter-reading portion of the project costs \$665,000, or about 35% to 40% of the project. (Tr. 51).

Mr. Frymier described the radio-reading meters as "proven technology." (Tr. 57). The system to be used is the Neptune System. (Tr. 57). A radio meter cost a couple hundred dollars compared to a standard meter which costs approximately \$50 to \$70. (Tr. 58). Without radio-read metering, the Utility will need to hire additional meter readers. (Tr. 58).

George Blum is an accounting expert employed with Cerrone Associates working on the project. (Tr. 63). Mr. Blum testified that the Utility has an existing cash-flow deficit of \$32,655. (Tr. 65). The Utility has three different rate schedules for various parts of its system. (Tr. 65). The current monthly minimum for Schedule I is \$13.56; for Schedule II, \$23.97; and for Schedule III, \$17.10. (Tr. 65).

After the rates go into effect to recover the costs associated with the new water treatment plant, the monthly minimums will be \$19.02 for Schedule I, \$33.60 for Schedule II and \$23.97 for Schedule III. (Tr. 66). The Utility has 11 existing outstanding bond issues. (Tr. 65).

Even at going-level, with the new higher rates for the treatment plant, the Utility will have an annual deficit of \$13,846. (Tr. 66). Mr. Blum estimated that the project at issue will increase operation and maintenance expenses only nominally by \$279. (Tr. 66). He calculated the rate increase to support the project to be 18.5%, with proposed monthly minimum rates for Schedule I of \$22.64, for Schedule II of \$39.82 and Schedule III of \$28.40. (Tr. 67). The proposed rates for 4,500 gallon customers would be \$30.81 under Schedule I, \$54.44 under Schedule II and \$38.85 under Schedule III. (Tr. 68, 69). Mr. Blum explained that the various schedules for different geographic territories were established because the rates were originally established in various certificate cases for various water line extensions, which all had different funding scenarios. (Tr. 69).

The interest rate for the loan proposed to finance this project is 4.375% from the USDA Rural Utility Service. (Tr. 69, 70). Mr. Blum testified that no grant funding was available for the project. (Tr. 70). The Utility also proposes an 18.5% increase for the Town of Elizabeth with a \$0.26 per 1,000 gallon adjustment, which is a discount for a limited period of time to pay for a portion of construction that Elizabeth made with the last extension, essentially reflecting a contribution in aid of construction. (Tr. 76).

Mineral Wells, also a resale customer, operates through a contract which provides for certain cost sharing. (Tr. 77). The only portion of the project that Mineral Wells would pay for under the terms of its contract would be debt service related to the operation center. (Tr. 77, 78).

Sylvie Steranka, a Technical Analyst in the Commission's Engineering Division, indicated that the proposed project was in conformance with the Commission's rules and regulations. (Tr. 80). Ms. Steranka believes that the project is needed. (Tr. 81). The Health Department rules require that any booster stations have two pumps, with either pump capable of supplying all the needs of the customers, which allows pumps to be maintained and limits any outages. (Tr. 81). The current storage in the Murphy Town area does not comply with the Department of Health regulations which require capacity equal to twice the daily demand plus fire flow. (Tr. 82). The additional tank will make the Utility system comply with the Health Department regulations regarding storage. (Tr. 83). The turnover rate with the new tank would be 21%, which is in excess of the 20% minimum required under the regulations. (Tr. 84).

Ms. Steranka testified that the Utility was running out of capacity to store its files in its existing office complex and had inadequate rooms available for its needs. (Tr. 85, 86). Ms. Steranka hopes that, with the new automatic meter reading, the Utility will be able to bill its customers on a monthly basis. (Tr. 86). Monthly billing is helpful because it helps detect leaks sooner. (Tr. 86). Ms. Steranka opined that the radio-read meters will eventually save the Utility money in employee wages and benefits. (Tr. 88).

Nathan Nelson, a Utilities Analyst for Commission Staff, recommended a proposed rate increase of 18.5% to support the project. (Tr. 90). The proposed rates will result in a cash-flow surplus of \$15,655. (Tr. 91). The resulting rates would provide a 121.9% debt service coverage. (Tr. 92). The Staff-recommended rates are the same as those proposed by the Utility in its filing. (Tr. 92, 93).

Todd Grinstead, the General Manager for the Utility, testified that it currently takes three men eight days a month to read the meters. (Tr. 96). With the automated reading system, Mr. Grinstead estimated that one man can read the meters in a day and a half. (Tr. 96). The Utility also wants to implement monthly billing in order to identify and repair leaks sooner and will be able to do so with the new meter-reading system. (Tr. 96). The automated meter-reading system will allow meter readers to find troubled meters before they leave the area in order to address any problems. (Tr. 97). The current process involves the meter reader going back to the office and generating a list, then driving back out to the system where the defective meters are located to make repairs. (Tr. 97).

The employees are working close together in the existing building, which has no room to add another desk. (Tr. 97, 98). The existing office complex cannot receive shipments with tractor-trailers because of the narrow entry off Route 47. (Tr. 98). The Utility has equipment sitting outside, which needs to be inside. (Tr. 98). The 16' x 16' existing board room also contains the Assistant Manager's desk and office equipment. (Tr. 98, 99). A larger facility would enable the Utility to have Rural Water Association classes at their facility. (Tr. 99). The location near the water treatment plant will save employee travel time. (Tr. 100). The existing office is a mile and a half from the treatment plant. (Tr. 101).

#### DISCUSSION

This project has strong public opposition. The Commission received a large number of letters and both hearings were very well attended. It is understandable that the customers of the Utility are upset, in part, because of the fact that a previously approved significant rate increase associated with the Utility's improvement of its treatment plant was just being implemented at the time of the hearings on the current project. Another exacerbating factor is that certain service areas of the Utility already have relatively high rates. Every time the rates are increased

across-the-board these high rate areas become even higher.<sup>4</sup> Another reason for customer anger is the Utility's apparent representations in the past that rates would go down as the system was expanded, which has not come to pass.

Despite the large number of protests, the Utility must proceed with the improvements to the Murphy Town-Loomis Ridge portion of the system. The reliance of the Utility on using both of its pumps in the Murphy Town booster station for 20 hours a day cannot continue indefinitely. Under Health Department guidelines, the Utility is required to be able to serve its entire load with one of the two pumps. Such a requirement is in place to insure that water service is not interrupted when one pump needs to be worked on or replaced. The system is now straining to meet current demands. Left unimproved, not only would the Utility be in violation of Health Department standards, but it is likely that the entire area will suffer from lengthy service outages in the future.

The hydraulic bottlenecks in the Murphy Town-Loomis Ridge area are also of a significant concern. Growth and development in the area have made it necessary to increase the capacity of the system to deliver water. Increasing line capacity in the area will enable the Utility to serve new loads as well as insure its reliability to existing customers. The increased storage will also permit the Utility to come within Health Department guidelines regarding required storage.

Less critical is the Utility's plan to automate its meter reading. Currently, it takes 24 man-days to read the system's meters. The evidence indicated that, with the new system, it will take 1 ½ man-days to read the meters. Without the new system, the Utility indicated that it would have to hire another meter reader. With the new system, the Utility will be able to utilize its employees for other functions including identifying and repairing leaks. The evidence also showed that the new system will be safer for the Utility's employees who will no longer have to routinely leave the truck along busy highways to read meters. They will also be notified of dead meters while still in the field, making investigations and repairs of those meters more efficient. The evidence also indicated that the new meter reading system would be more accurate and would likely result in the Utility being able to implement monthly billing.

Although the need for the automated meter reading system in no way compares to the need for the Murphy Town-Loomis Ridge improvements, the Utility has adequately shown that the improvements are needed and reasonable.

Again, the new office complex is a much less critically needed improvement than the Murphy Town-Loomis Ridge improvements. The Utility could survive without an improvement in its office building. However,

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<sup>4</sup>The Commission has already ordered the Utility to undergo a class cost of service study in order that the Utility's rates might be unified. The Utility is under order to file for the rate review one year after the implementation of the rates associated with the improvements to its treatment plant. See Commission Order issued February 9, 2006, in Case No. 05-0479-PWD-CN-PC.

the evidence does demonstrate that the Utility has outgrown its existing facility. The meeting room is inadequately sized with no room for an additional desk. The inability to receive tractor-trailer shipments because of the existing narrow entry off Rt. 47 creates problems. A larger facility would enable the Utility to get some of its equipment under roof and would potentially allow for better record keeping. The new facility would also save Utility staff time because the office would actually be at the treatment plant site.

The rates resulting from this project for a 4,500 gallon customer would be \$30.81 a month for Schedule I; \$54.44 for Schedule II; and \$38.85 a month for Schedule III. Minimum monthly bills would be \$22.64 for Schedule I; \$39.82 for Schedule II; and \$28.40 for Schedule III. Only the Schedule II rates would be high when compared to other water rates in the State. It is quite likely that the Utility's rates will be unified by the Commission after the required class cost of service study is completed. Such a unification most likely would result in lower rates for customers served under Schedule II.

The proposed financing for the project is reasonable and should be approved. The low interest, long term financing from the USDA Rural Utility Service is much better than the Utility could receive in the private market.

A certificate should be issued for the project. The Staff-recommended rates should be approved for use by the Utility upon substantial completion of the project.

#### FINDINGS OF FACT

1. On May 15, 2007, the Utility filed an application for a certificate of convenience and necessity to construct certain improvements to its water system serving customers in Wood and Wirt Counties. (See filing).

2. The Utility properly published notice of its filing and properly mailed notice to its customers as required by Commission Rules. (See affidavits and statements filed July 11, 2007).

3. The application was heavily protested by the Utility's customers, both with letters of protest and significant public comment at the hearings. (See file generally, Tr. 9 to 38, 103 to 107, Tr. II 5 to 52).

4. Many of the distribution lines in the Murphy Town-Loomis Ridge area are inadequately sized, causing significant hydraulic bottlenecks in the area. Growth in the area has resulted in taxing the system to the point where reliability is at risk. The project proposes to parallel existing lines with new larger lines. (Tr. 41, 42, 43; original filing).

5. The Murphy Town booster station is using both of its pumps as much as twenty hours a day to meet demand. If one of the pumps malfunctioned, the system would be unable to serve customers for a significant period of time. Health Department rules require that booster stations

have two pumps, with one pump being able to supply all the needs of the customers. The Utility is currently out of compliance with these rules. The project will completely replace the Murphy Town booster station with a station with pumps twice as large. (Tr. 42, 43, 81).

6. The Loomis Ridge water tank has not been painted for 25 years and needs to be painted or it will become unusable. The area has inadequate water storage and the project calls for an additional tank to be placed beside the Loomis Ridge tank providing an additional 380,000 gallons of capacity. The current storage capacity is out of compliance with Department of Health rules. The additional capacity will provide the Utility with adequate storage to be within the rules. (Tr. 43, 44, 45, 82, 83, 84).

7. The project will also build a new office building for the Utility which has outgrown its current office building. The new building will allow the Utility to centralize functions at the water treatment plant location, which would save employee travel time. The Utility is running out of room for its files and has inadequate office and meeting room space. The employees work together closely, without room for an additional desk. The existing complex is unable to receive shipments from tractor trailers because of a narrow entry off Rt. 47. The new building would allow the Utility to get certain equipment under roof that it currently stores outside. Larger meeting room space would enable the Utility to have on-site classes offered by the Rural Water Association. (Tr. 45, 46, 85, 86, 97, 98, 99, 100, 101).

8. The project would also replace the Utility's touch-read meters with radio-read meters. The automated meter reading system will make meter reading more accurate, safer and efficient. The radio-read meters are "proven technology." It currently takes 24 man-days of labor to read the Utility's meters. With the new system, it should take  $1\frac{1}{2}$  man-days. Without the new system, the Utility would be required to hire an additional employee. The new system will allow workers to repair or replace dead meters while they are still on location, saving travel time. The Utility and Staff hope the system will enable the Utility to convert to monthly billing, which would aid in eliminating leaks. (Tr. 49, 51, 58, 86, 88, 96, 97).

9. The Utility has a working cash-flow deficit of \$32,655. The Utility has 11 outstanding bond issues and three different rate schedules for its customers. Even after the rate increase is put into effect for the new treatment plant, the Utility will suffer from an annual deficit of \$13,846. (Tr. 65, 66).

10. The Utility's rates will need to be increased by 18.5% to support the project, resulting in rates for a 4,500 gallon customer of \$30.81 a month for Schedule I; \$54.44 for Schedule II; and \$38.85 a month for Schedule III. Minimum monthly bills would be \$22.64 for Schedule I; \$39.82 for Schedule II; and \$28.40 for Schedule III. (Tr. 67, 68, 69; Staff Ex. 1).

11. The proposed financing consists of a 4.375% loan of \$2,900,000 for 40 years, with the first two years being interest only from the Rural Utilities Service, which Staff views as reasonable. (Tr. 69, 70; Staff Ex. 1).

12. Staff and the Utility agree on the rates needed for the project. The proposed rates provide a surplus of \$15,655 and a debt service coverage of 121.96%. (Staff Ex. 1).

13. The estimated cost of the project is reasonable. (Staff Ex. 1).

14. The Health Department has issued Permit No. 17,321 approving the project. All other permits have been applied for by the Utility. (Staff Ex. 1).

15. The plans and specifications of the project do not conflict with Commission rules and regulations. (Staff Ex. 1).

#### CONCLUSIONS OF LAW

1. Public convenience and necessity require the project.

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

3. Since the proposed rates are reasonable, just and sufficient, but not more than sufficient, to cover the cost of providing service, they should be approved for all service rendered after substantial completion of the project.

#### ORDER

IT IS, THEREFORE, ORDERED that the application filed by Claywood Park Public Service District for a certificate of convenience and necessity to construct improvements to its water system, filed on May 15, 2007, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing, consisting of a USDA Rural Utility Service loan in the amount of \$2,900,000 for 40 years at 4.375% with the first two years being interest only, be, and hereby is approved.

IT IS FURTHER ORDERED that the attached rates for the Utility be, and hereby are, approved for use by the Utility upon substantial completion of the project. The Utility shall file with the Commission a proper revised tariff sheet and at least five copies within thirty days of the date that the project is placed in service.

IT IS FURTHER ORDERED that the granting of this application is contingent upon the Utility's receipt of all additional required permits.

IT IS FURTHER ORDERED that, if a change in the plans, scope or financing for the project that affects rates, the Utility must notify the Commission and request a reopening of this case for adjustments and approval, prior to construction. If a change in project costs does not affect rates, the Utility must file an affidavit signed by a C.P.A. verifying that fact.

IT IS FURTHER ORDERED that the Utility submit a certified copy of the tabulation of bids as soon as they become available.

IT IS FURTHER ORDERED that the Utility provide the Commission a copy of the certificate of substantial completion for each contract within ten days of issuance.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, the Utility shall comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

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

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

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary 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 the exceptions.

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

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



Keith A. George  
Administrative Law Judge

KAG:kkp  
070850ab.wpd

CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
CASE NO. 07-0850-PWD-CN

APPROVED RATES

SCHEDULE NO. 1

APPLICABILITY

Applicable in entire territory served, except Deerwalk Extension area, Camp Barbe/Rt. 14, Walker-Kites Run area and Mountwood Park.

AVAILABILITY OF SERVICE

Available for the general domestic, commercial and industrial service.

RATE (For two months billing)

		<u>Per 1,000 gallons</u>
First	6,000 gallons used in 2-month period	\$7.51
Next	14,000 gallons used in 2-month period	\$5.52
Next	20,000 gallons used in 2-month period	\$4.27
Next	60,000 gallons used in 2-month period	\$3.76
Over	100,000 gallons used in 2-month period	\$3.02

RATE (For one months billing)

		<u>Per 1,000 gallons</u>
First	3,000 gallons used in 2-month period	\$7.51
Next	7,000 gallons used in 2-month period	\$5.52
Next	10,000 gallons used in 2-month period	\$4.27
Next	30,000 gallons used in 2-month period	\$3.76
Over	50,000 gallons used in 2-month period	\$3.02

MINIMUM CHARGE

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

	<u>Monthly</u>	<u>Bimonthly</u>
5/8 inch meter	\$ 22.53	\$ 45.06
3/4 inch meter	\$ 33.80	\$ 67.60
1 inch meter	\$ 56.33	\$ 112.66
1-1/4 inch meter	\$ 82.23	\$ 164.46
1-1/2 inch meter	\$ 112.65	\$ 225.30
2 inch meter	\$ 180.24	\$ 360.48
3 inch meter	\$ 337.95	\$ 675.90
4 inch meter	\$ 563.25	\$1,126.50
6 inch meter	\$1,126.50	\$2,253.00
8 inch meter	\$1,802.40	\$3,604.80

PRIVATE PROTECTION SERVICE

For private fire hydrants \$16.63 per month per tap  
For sprinkler systems \$55.42 per month

BILLING PROCEDURE

Monthly meter reading and billing of all rental property accounts, and industrial, commercial or school accounts requesting monthly billing. On all other accounts, meter reading and billing shall be on a bimonthly basis.

TRAILER COURTS

House trailers, either mobile or immobile, located on sites other than a park or court shall be billed in the same manner as any other family or business unit.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100 will be charged to any customer applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$350 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RECONNECTION - \$20.00

To be charged whenever the supply of water is turned off for violations of rules, nonpayment of bills or fraudulent use of water.

ADMINISTRATIVE FEE

In the event the District collects payment in full of a delinquent water bill at the customer's premises in lieu of a discontinuance of service for nonpayment, an administrative fee of \$10 shall also be collected in addition to the delinquent water bill.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent 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.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

INCREMENTAL COST OF WATER PRODUCED

\$0.35 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NO. 2

APPLICABILITY

Applicable within the Deerwalk Extension area, Camp Barbe/Rt. 14 Extension and Mountwood Park.

AVAILABILITY OF SERVICE

Available for the general domestic, commercial and industrial service.

RATE (For two months billing)

		<u>Per 1,000 gallons</u>
First	6,000 gallons used in 2-month period	\$13.27
Next	14,000 gallons used in 2-month period	\$ 9.75
Next	20,000 gallons used in 2-month period	\$ 7.64
Next	60,000 gallons used in 2-month period	\$ 6.79
Over	100,000 gallons used in 2-month period	\$ 5.32

RATE (For one months billing)

		<u>Per 1,000 gallons</u>
First	3,000 gallons used in 2-month period	\$13.27
Next	7,000 gallons used in 2-month period	\$ 9.75
Next	10,000 gallons used in 2-month period	\$ 7.64
Next	30,000 gallons used in 2-month period	\$ 6.79
Over	50,000 gallons used in 2-month period	\$ 5.32

MINIMUM CHARGE

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

	<u>Monthly</u>	<u>Bimonthly</u>
5/8 inch meter	\$ 39.81	\$ 79.62
3/4 inch meter	\$ 59.72	\$ 119.44
1 inch meter	\$ 99.53	\$ 199.06
1-1/4 inch meter	\$ 145.31	\$ 290.62
1-1/2 inch meter	\$ 199.05	\$ 398.10
2 inch meter	\$ 318.48	\$ 636.96
3 inch meter	\$ 597.15	\$1,194.30
4 inch meter	\$ 995.25	\$1,990.50
6 inch meter	\$1,990.50	\$3,981.00
8 inch meter	\$3,184.80	\$6,369.60

PRIVATE PROTECTION SERVICE

For private fire hydrants	\$16.63 per month per tap
For sprinkler systems	\$55.42 per month

BILLING PROCEDURE

Monthly meter reading and billing of all rental property accounts, and industrial, commercial or school accounts requesting monthly billing. On all other accounts, meter reading and billing shall be on a bimonthly basis.

TRAILER COURTS

House trailers, either mobile or immobile, located on sites other than a park or court shall be billed in the same manner as any other family or business unit.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100 will be charged to any customer applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$350 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RECONNECTION - \$20.00

To be charged whenever the supply of water is turned off for violations of rules, nonpayment of bills or fraudulent use of water.

ADMINISTRATIVE FEE

In the event the District collects payment in full of a delinquent water bill at the customer's premises in lieu of a discontinuance of service for nonpayment, an administrative fee of \$10 shall also be collected in addition to the delinquent water bill.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent 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.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

INCREMENTAL COST OF WATER PRODUCED

\$0.35 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NO. 3

APPLICABILITY

Applicable in Walker-Kites Run area.

AVAILABILITY OF SERVICE

Available for the general domestic, commercial and industrial service.

RATE (For two months billing)

		<u>Per 1,000 gallons</u>
First	6,000 gallons used in 2-month period	\$9.47
Next	14,000 gallons used in 2-month period	\$6.96
Next	20,000 gallons used in 2-month period	\$5.45
Next	60,000 gallons used in 2-month period	\$4.83
Over	100,000 gallons used in 2-month period	\$3.77

RATE (For one months billing)

		<u>Per 1,000 gallons</u>
First	3,000 gallons used in 2-month period	\$9.47
Next	7,000 gallons used in 2-month period	\$6.96
Next	10,000 gallons used in 2-month period	\$5.45
Next	30,000 gallons used in 2-month period	\$4.83
Over	50,000 gallons used in 2-month period	\$3.77

MINIMUM CHARGE

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

	<u>Monthly</u>	<u>Bimonthly</u>
5/8 inch meter	\$ 28.41	\$ 56.82
3/4 inch meter	\$ 42.62	\$ 85.24
1 inch meter	\$ 71.03	\$ 142.06
1-1/4 inch meter	\$ 103.70	\$ 207.40
1-1/2 inch meter	\$ 142.05	\$ 284.10
2 inch meter	\$ 227.28	\$ 454.56
3 inch meter	\$ 426.15	\$ 852.30
4 inch meter	\$ 710.25	\$1,420.50
6 inch meter	\$1,420.50	\$2,841.00
8 inch meter	\$2,272.80	\$4,545.60

PRIVATE PROTECTION SERVICE

For private fire hydrants \$16.63 per month per tap  
For sprinkler systems \$55.42 per month

BILLING PROCEDURE

Monthly meter reading and billing of all rental property accounts, and industrial, commercial or school accounts requesting monthly billing. On all other accounts, meter reading and billing shall be on a bimonthly basis.

TRAILER COURTS

House trailers, either mobile or immobile, located on sites other than a park or court shall be billed in the same manner as any other family or business unit.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$100 will be charged to any customer applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$350 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RECONNECTION - \$20.00

To be charged whenever the supply of water is turned off for violations of rules, nonpayment of bills or fraudulent use of water.

ADMINISTRATIVE FEE

In the event the District collects payment in full of a delinquent water bill at the customer's premises in lieu of a discontinuance of service for nonpayment, an administrative fee of \$10 shall also be collected in addition to the delinquent water bill.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent 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.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

INCREMENTAL COST OF WATER PRODUCED

\$0.35 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NO. 4

APPLICABILITY

Applicable for the Town of Elizabeth

AVAILABILITY OF SERVICE

Available for sales for resale.

RATE

\$2.67 per 1,000 gallons



## GENERAL CERTIFICATE

### CLAYWOOD PARK PUBLIC SERVICE DISTRICT

Water Revenue Bond (Water System Improvements Project),  
Series 2008

#### CERTIFICATE OF:

1. Award of Series 2008 Bond
2. No Litigation
3. Governmental Approvals
4. No Adverse Financial Change; Indebtedness
5. Signatures, etc.
6. Certification of Copies of Documents
7. Incumbency and Official Name
8. Delivery and Payment
9. Land and Rights of Way
10. Meetings, etc.
11. Contractors' Insurance, etc.

We, the undersigned Chairman and Secretary of the Public Service Board of Claywood Park Public Service District, of Wood and Wirt Counties, West Virginia (the "District"), and the undersigned Counsel for the District, hereby certify in connection with the Claywood Park Public Service District Water Revenue Bond (Water System Improvements Project), Series 2008, dated on the date hereof, in the principal amount of \$2,900,000, bearing interest at the rate of 4.375% per annum, as follows:

1. Award of Series 2008 Bond: The entire issue of the Series 2008 Bond has been duly awarded to the United States of America pursuant to a Letter of Conditions, from the Department of Agriculture and as appears in Section 2.02 of the Resolution authorizing the issuance of the Series 2008 Bond.

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 issuance and delivery of the Series 2008 Bond, nor questioning the proceedings and authority by which the District authorized the issuance and sale of the Series 2008 Bond, nor in any manner affecting the validity or enforceability of the Series 2008 Bond or any provisions made or authorized for the payment thereof; nor questioning the existence of the District or the title of the members and officers of the Public Service Board thereof to their respective offices; nor questioning the construction and acquisition of additions and improvements to the water system of the District (the "Project"), construction of which is being financed out of the proceeds of the sale of the Series 2008 Bond; nor questioning the rates and charges for the services of the Water System.

3. Governmental Approvals: All applicable approvals and certificates required by law for construction and operation of the Project have been duly and timely obtained and remain in full force and effect.

4. No Adverse Financial Change; Indebtedness: There has been no adverse financial change in the financial condition of the District since the approval by RUS of a loan to assist in construction and acquisition of the Project.

The only outstanding obligations of the Issuer which will rank on a parity with the Series 2008 Bond as to liens and source of and security for payment are the following:

Waterworks Revenue Bond, Series 1975, dated March 3, 1975 ("Series 1975 Bond"), issued in the original principal amount of \$685,000, bearing interest at the rate of 5% per annum, the current unpaid balance of which is \$227,734.30;

Water Revenue Bond, Series 1979, dated January 7, 1980 ("Series 1979 Bond"), issued in the original principal amount of \$1,100,000, bearing interest at the rate of 5% per annum, the current unpaid balance of which is \$564,870.45;

Water Revenue Bond, Series 1993 B, dated December 1, 1993 ("Series 1993 B Bond"), issued in the original principal amount of \$410,000, bearing interest at the rate of 5% per annum, the current unpaid balance of which is \$349,741.96;

Water Revenue Bond, Series 1995, dated April 3, 1995 ("Series 1995 Bond"), issued in the original principal amount of \$190,000, bearing interest at the rate of 4.5% per annum, the current unpaid balance of which is \$163,137.09;

Water Revenue Bond, Series 1997 A, dated August 18, 1997 ("Series 1997 A Bond"), issued in the original principal amount of \$145,000, bearing interest at the rate of 5.5% per annum, the current unpaid balance of which is \$115,748.27;

Water Revenue Bond, Series 1998, dated January 23, 1998, ("Series 1998 Bond"), issued in the original principal amount of \$750,000, bearing interest at the rate of 5.25% per annum, the current unpaid balance of which is \$685,315.45;

Water Revenue Bond, Series 2002, dated December 19, 2002, ("Series 2002 Bond"), issued in the original principal amount of \$1,350,000, bearing interest at the rate of 4.625% per annum, the current unpaid balance of which is \$1,296,290.37;

Water Refunding Revenue Bonds, Series 2003, dated June 1, 2003 ("Series 2003 Bonds"), issued in the original principal amount of \$975,000, bearing interest at rates from 3.5% to 5.5% per annum, the current unpaid balance of which is approximately \$860,000.00.

Water Revenue Bond, Series 2006 A, dated June 28, 2006, ("Series 2006 A Bond"), issued in the original principal amount of \$4,175,000, bearing interest at the rate of 4.375% per annum, the current unpaid balance of which is \$4,171,600.63;

Water Revenue Bond, Series 2006 B, dated June 28, 2006, ("Series 2006 B Bond"), issued in the original principal amount of \$870,000, bearing interest at the rate of 4.25% per annum, the current unpaid balance of which is \$870,384.64;

Water Revenue Bond, Series 2006 C, dated June 28, 2006, ("Series 2006 C Bond"), issued in the original principal amount of \$2,563,000, bearing interest at the rate of 4.375% per annum, the current unpaid balance of which is \$2,096,401.03;

All of these obligations are held by FmHA, its successors or assigns with the exception that the Series 2003 Bonds are held by others. The District is not in default in any of the terms contained in the above described bonds nor the resolutions authorizing them.

The Series 2008 Bond will be issued on parity with the prior bonds enumerated above as to liens and source of and security for payment

5. Signatures, etc.: The undersigned Chairman and Secretary, for the District on the date hereof, officially executed and sealed the Series 2008 Bond with the official corporate seal of the District, an impression of which seal is on this certificate above our signatures and the undersigned Chairman and Secretary are the duly elected, qualified and serving officials as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Series 2008 Bond for the District.

6. Certification of Copies of Documents: The copies of the documents listed below, attached hereto or delivered herewith or heretofore are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded or amended or changed in any way unless modification appears from later documents also listed below:

Minutes of the Board Meeting organizing the District for the current year, on February 12, 2008

Final Order of the County Commission of Wood County creating the District

Final Orders of the County Commissions of Wood and Wirt Counties enlarging the boundaries of the District

Orders of the County Commission of Wood County appointing the members of the Public Service Board of the District and their Oaths of Office

Rules of Procedure of the District

Bond Resolution adopted by the Public Service Board on May 6, 2008

Minutes on adoption of the Bond Resolution  
1979 Resolution

Recommended Decision of the Public Service Commission of West Virginia, entered November 8, 2007 which became final on November 28, 2007, granting the Certificate of Convenience and Necessity

7. Incumbency and Official Name: The proper corporate title of the District is "Claywood Park Public Service District" and its principal office and place of business are in Wood County, West Virginia. The governing body of the District is its Public Service Board consisting of three members and their respective offices, dates of commencement and termination of current terms of office are as follows:

<u>Office</u>	<u>Name</u>	<u>Date of Commencement of Term</u>	<u>Date of Expiration of Term</u>
Chairman	Michael A. Miller	November 1, 2002	November 1, 2008
Secretary	C. Randall Law	November 1, 2006	November 1, 2012
Member	Edna Summers	November 1, 2004	November 1, 2010

All of the foregoing officers took, subscribed to and filed their oaths of office in accordance with law prior to entering upon their official duties; all of those required to give bonds or undertakings filed such bonds or undertakings at the place and in the manner required by law; all of them have otherwise duly qualified for office and were or are the acting officers for their respective periods above stated; and no proceedings for the removal from office of any such officer have been taken or are pending or threatened.

The duly appointed Counsel for the District is Steven R. Hardman, Esquire, of Bowles Rice McDavid Graff & Love LLP, of Parkersburg, West Virginia.

8. Delivery and Payment: On the date hereof, Series 2008 Bond No. R-1 was delivered to United States Department of Agriculture at Parkersburg, West Virginia, by the undersigned Chairman, and at the time of such delivery, the Series 2008 Bond had been duly and fully executed and sealed on behalf of the District in accordance with the Bond Resolution.

At the time of delivery of the Series 2008 Bond, the amount of \$230,000 was received by the undersigned Chairman.

9. Land and Rights of Way: All land in fee simple and all rights of way and easements necessary for the construction, operation and maintenance of the Water System and the Project have been acquired or can and will be acquired by purchase, or if necessary, by condemnation by the District and are adequate for such purposes and are not or will not be

subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation are, in the opinion of the undersigned, within the ability of the District to pay for the same without jeopardizing the security of or payments on the Series 2008 Bond.

10. Meetings, etc.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the District in any way connected with the construction, operation and financing of the Water System and the Project were authorized or adopted at meetings of the Public Service Board duly and regularly called and held pursuant to the Rules of Procedure of the District and all applicable statutes, and a quorum of duly elected, qualified and acting members of the Board was present and acting at all times during all such meetings.

11. Contractors' Insurance, etc.: All contractors have been required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions and Commitment of FmHA and the Bond Resolution.

WITNESS our signatures and the official corporate seal of CLAYWOOD PARK PUBLIC SERVICE DISTRICT on the 8th day of May, 2008.

[SEAL]

CLAYWOOD PARK PUBLIC SERVICE  
DISTRICT

By: 

Its Chairman

By: 

Its Secretary



Counsel

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

Water Revenue Bond, Series 1979

Bond Anticipation Notes, Series 1979

BOND AND NOTE RESOLUTION

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CLAYWOOD PARK PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$1,100,000 WATER REVENUE BOND, SERIES 1979, BOND ANTICIPATION NOTES OF CLAYWOOD PARK PUBLIC SERVICE DISTRICT TO FINANCE CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS FOR THE WATERWORKS OF THE DISTRICT; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND AND THE NOTES; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BOND AND THE NOTES; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF CLAYWOOD PARK PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for This Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code (the "Act") and other applicable provisions of law. Claywood Park Public Service District (the "Issuer") is a public service district created pursuant to the Act by The County Commission of Wood County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) The Issuer now has a public waterworks.

(B) It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be constructed additions, extensions and improvements for the existing waterworks of the Issuer consisting of a water intake facility on Little Kanawha River, a water treatment plant, additional transmission lines and water storage tanks, with all necessary appurtenant facilities (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

(C) It is necessary for the Issuer to issue its revenue bond in the principal amount of \$1,100,000 to finance a portion of the cost of such construction in the manner hereinafter provided and, prior to delivery of the Bond, it is necessary for the Issuer to issue its bond anticipation notes in the same principal amount.

(D) The estimated maximum cost of the construction of the Project is \$2,100,000 of which \$1,100,000 will be obtained from the proceeds of sale of the Bond herein authorized, and the balance from a grant of \$1,000,000 from the Purchaser.

(E) The cost of such construction shall be deemed to include, without being limited to, the construction or acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Bond and the BAN prior to, during and for six months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorizing hereby.

(F) The period of usefulness of the System after completion of the Project is not less than forty years.

(G) There are not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bond or the BAN as to lien and source of and security for payment except the following all held by the Purchaser:

The Promissory Note (the "Note") of Claywood Park Water Association dated April 11, 1963, payable to the order of the Purchaser and assumed by the Issuer, in the original principal amount of \$330,000, to finance the original waterworks of the Issuer; and

The Water-Works System Revenue Bond, Series A, dated March 23, 1967 (the "1967 Bond") in the original principal amount of \$85,000; and

The Water Revenue Bond, Series 1975, dated February 19, 1975. (the "1975 Bonds") in the original principal amount of \$685,000.

(H) 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 Bond and the BAN, or will have so complied prior to issuance of the Bond or the BAN, including, among other things, the consent and approval, pursuant to the Act, of the issuance of the Bond by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired. The interim financing by the BAN shall also be so approved prior to delivery thereof.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Bond by the Purchaser and of the BAN by the purchasers thereof, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Bondholder and the holders of the BAN and the

covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Bond and for the holders of the BAN.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"BAN" means the Bond Anticipation Notes hereinafter provided for and any refunding bond anticipation note or notes hereafter issued.

"Bond" means the Water Revenue Bond, Series 1979, authorized hereby to be issued and also means and includes the BAN unless the context clearly would exclude the BAN.

"1967 Bond" means the Water-Works System Revenue Bond, Series A, described in Section 1.02(G).

"1975 Bond" means the Water Revenue Bond, Series 1975, described in Section 1.02(G).

"Bond Legislation" means this Resolution and all resolutions supplemental hereto.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Cerrone & Vaughn, Inc., Wheeling, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Issuer" means Claywood Park Public Service District, of Wood County, West Virginia, and, where appropriate, also means the Governing Body.

"Facilities" or "water facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the waterworks by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Public Service Board of the Issuer.

"Herein" means in this Bond Legislation.

"Holder of the Bond" or "Bondholder" or any similar term means any person who shall be the bearer or owner of the Bond and, unless the context clearly would exclude the BAN, also means the holders of the BAN.

"Issuer" means Claywood Park Public Service District and includes the Governing Body.

"Net Revenues" or "net revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

"Note" means the promissory note described in Section 1.02(G).

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles, and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital.

"Outstanding Obligations" means collectively the Note, the 1967 Bond and the 1975 Bond.

"Project" shall have the meaning stated in Section 1.02(B) above.

"Purchaser" means United States Department of Agriculture, Farmers Home Administration and any successor thereof.

"1967 Resolution" means the resolution providing for issuance of the 1967 Bonds.

"Revenues" or "gross revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"System" means the existing waterworks of the Issuer as expanded by the Project, and includes the complete waterworks of the Issuer and all facilities owned by the Issuer in connection with its waterworks and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks after completion of the Project.

"Trustee" - wherever herein reference is made to Commercial Banking & Trust Company, Parkersburg, West Virginia, as Trustee, such reference shall be construed to mean that said Bank is the depository of the BAN Note Repayment Account, and the Waterworks

qualified under west virginia law to serve as a Trustee.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

## BOND ANTICIPATION NOTES

Section 1.01 A. Authorization and General. In order to pay certain costs of the construction of the Project pending the delivery of the Bond to the Purchaser, bond anticipation notes ("BAN") of the Issuer shall be issued and sold in the amount of \$1,100,000.

Each BAN shall be designated "Waterworks Bond Anticipation Note, Series 1979," shall be dated on the date of delivery thereof, shall be numbered 1 upward, shall be in such denominations as the Governing Body shall determine by the Supplemental Resolution, shall be negotiable, in bearer form, shall bear interest from the date of delivery payable and at the rate or rates, shall mature, shall have such paying agents and shall have such other provisions as are not set forth herein as provided in such Supplemental Resolution. The BAN shall contain the provisions shown in the form of BAN set forth in Section 1.12 A below.

The BAN shall be executed for the Issuer by the Chairman, and the seal of the Issuer shall be impressed thereon and attested by the signature of the Secretary.

The BAN shall be sold pursuant to a Purchase Agreement to be entered into between the Issuer and Underwriters pursuant to such Supplemental Resolution.

Section 1.02 A. Deposit of BAN Proceeds. The amount received upon the sale of the BAN, less interest to become due until the maturity thereof, shall be deposited on receipt by or for the Issuer in Commercial Banking & Trust Company, Parkersburg, West Virginia (the "Trustee"), a member of the Federal Deposit Insurance Corporation ("FDIC"), in the Waterworks Project Construction Account established by Section 3.01 hereof; provided, that the Issuer may designate any other bank in West Virginia as Trustee if the above-named Trustee should refuse or be unable to serve.

The balance received from the proceeds from the sale of the BAN shall be for payment of the interest on the BAN as such interest becomes due, and shall be directly deposited on receipt by or for the Issuer with the Trustee in a special segregated account designated "Claywood Park Public Service District Waterworks BAN Repayment Account," as more particularly described and upon the further terms and conditions of Section 1.06 A hereof.

Section 1.03 A. Security for the BAN. The BAN shall be secured by the pledge by the Issuer of and by a first lien on (i) the obligation of the Purchaser to make the loan to the Issuer in the amount of \$1,100,000 (the "Loan") by purchasing the Bond, (ii) the proceeds of the sale of the Bond when received from the Purchaser, (iii) all moneys and securities in the Waterworks BAN Repayment Account, (iv) the proceeds from the sale of the BAN until expended as herein authorized, (v) the proceeds of sale of the BAN refunding notes, if any, and (vi) the Net Revenues of the System until payment of the BAN, and said pledge by the District for the benefit of the holders of the BAN, to the extent of the aggregate principal

pledge and liens in favor of the Outstanding Obligations as to the Net Revenues, is hereby made and granted. The Issuer will execute such financing statements, security agreements and other documents that may be required to perfect such pledge and lien. The Trustee shall act as agent for the holders of the BAN in connection with the execution of all financing statements and other instruments necessary under applicable laws in order to fully perfect the interests of the holders of the BAN in the assets pledged hereby, and to receive all notices and respond to all inquiries in connection therewith. The BAN shall also be secured by a statutory mortgage lien on the System as provided in the Act.

Section 1.04 A. Payment of BAN. The Issuer will immediately deposit with the Trustee all proceeds from the sale of the Bond and of any refunding BAN to pay the BAN, to be placed by the Trustee directly into the Waterworks BAN Repayment Account held by the Trustee. Upon maturity of the BAN, the Trustee will pay to the Paying Agents all principal and interest owing on the BAN.

Section 1.05 A. BAN Are Limited Obligations. The BAN shall be limited obligations of the Issuer, the interest of which is payable solely from certain of the proceeds from the sale of the BAN, the principal of which is payable from the source described in Section 1.03 A above, or, the principal of and interest on which are payable, on a parity with the Outstanding Obligations, from the Net Revenues of the Issuer arising from ownership and operation of the System in the event that the Purchaser shall not purchase the Bond in accordance with its agreement to do so.

Section 1.06 A. Trustee; Waterworks BAN Repayment Account. The Trustee shall segregate all funds and securities in the Waterworks BAN Repayment Account separate and apart from other deposits and funds of the Trustee and other deposits and funds of the Issuer, including the Waterworks Project Construction Account. All moneys in the Waterworks BAN Repayment Account, until payment in full of all principal and interest owing on the BAN at maturity, shall be held by the Trustee for the holders of the BAN, and the District shall have no rights with respect thereto. All moneys in the Waterworks BAN Repayment Account in excess of the amount insured by FDIC shall be continuously secured by, or invested by the Trustee in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America ("Federal Obligations") which Federal obligations shall mature at least 1 day prior to need for the funds for payment of interest on or principal of the BAN. At or prior to any interest payment date and the maturity of the BAN, the Trustee shall transfer to the Paying Agents in immediately available funds the amount of interest or principal and interest owing on the BAN. Upon such transfer the Trustee shall pay to the Issuer any excess amounts remaining in the Waterworks BAN Repayment Account, and the Issuer shall deposit any such amounts in the Waterworks Project Construction Account. The Trustee is hereby authorized, upon payment of all principal and interest owing on the BAN, to execute UCC termination statements indicating the termination of the security interest of the holders of the BAN in the assets referred to in Section 1.03 A hereof.

The Issuer shall pay to the Trustee from time to time reasonable compensation for all services rendered by the Trustee under the Bond Legislation and all reasonable expenses, charges, counsel

fees and other disbursements incurred by the trustee in connection with its performance of its functions hereunder. The Issuer shall from time to time have the right to appoint a successor Trustee provided that such successor Trustee be a bank or trust company or national banking association insured by the FDIC. The Trustee shall signify its acceptance of the duties and obligations hereby imposed by executing and delivering to the Issuer a written acceptance thereof.

Section 1.07 A. Paying Agents. Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. The Issuer may appoint as successor Paying Agent any bank, trust company or national banking association. The Underwriters shall pay to each Paying Agent from time to time reasonable compensation for all services rendered hereunder and all reasonable expenses, charges, counsel fees, and other disbursements incurred in connection with the performance of its obligations hereunder.

Section 1.08 A. Covenants. The Issuer agrees that prior to the occurrence of any Event of Default (as hereinafter defined) and until payment in full of the principal and interest owing on the BAN when due, the covenants contained in Article IV for the benefit of the Bondholder (the term "Bondholder" when used in this Article I A means and includes the holders of the Bond and the Outstanding Obligations) shall inure to the benefit of the holders of the BAN. Upon the occurrence of an Event of Default, the holders of the BAN shall continue to be entitled to the benefit of all covenants contained in Article IV as if the holders of the BAN were the Bondholder.

In addition, the Issuer covenants to issue and sell the Bond to the Purchaser not later than one business day before the maturity of the BAN and to take all actions necessary to cause the Purchaser to purchase the Bond on or before such date, payment for the Bond to be in Federal funds available on date of the Bond delivery.

Section 1.09 A. Refunding BAN. The Issuer covenants that in the event the Bond is not issued and sold not later than one day prior to the due date of the BAN, it will use its best efforts to sell one or more series of its Bond Anticipation Refunding Notes hereunder in such aggregate amount as shall be necessary to pay the principal of the BAN, accrued interest thereon to maturity and the expense of issuing the Bond Anticipation Refunding Notes. The proceeds of the Bond Anticipation Refunding Notes, after making provision for the payment of the expenses of issuance thereof, shall be deposited in the Waterworks BAN Repayment Account and used solely for the payment of the principal of and accrued interest on the BAN.

All Bond Anticipation Refunding Notes shall be in substantially the same form as the BAN, but shall be of such denominations, bear such dates, bear interest at such rates, have such maturity dates and contain an appropriate series designation, all as shall be provided in the supplemental resolution authorizing such Bond Anticipation Refunding Notes.

SECTION 1.10 B. EVENTS OF DEFAULT AND ENFORCEMENT. Each of the following events is hereby declared an "Event of Default": (a) failure to make timely payment of all principal and interest owing on the BAN at due date or maturity; and (b) failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer for the benefit of the holders of the BAN as hereinabove provided.

On the happening of any Event of Default, then, and in each such case, the holders of the BAN or any one or more of such holders shall be entitled to proceed against all assets pledged for payment of the BAN held, and shall have and are hereby given all further rights and remedies as are granted hereby to the Bondholder. Each holder of a BAN shall be deemed to be a Bondholder upon such default.

In the event that the BAN are not paid when due, the interest rate on the BAN after maturity until payment thereof in full shall be \_\_\_\_\_% per annum, and the Issuer will pay the holders of the BAN not paid when due the principal amount of the BAN together with interest at the rate shown on the BAN from the date of the BAN until the due date thereof, and plus interest on the principal of the BAN at the rate of \_\_\_\_\_% per annum from the due date of the BAN until payment thereof in full.

Section 1.11 A. Defeasance of BAN. Upon deposit by the Issuer with the Trustee of moneys sufficient to pay the BAN at maturity or of Federal Obligations, the principal of and interest on which will be sufficient to pay the BAN at maturity, the BAN shall be considered to have been paid in full pursuant hereto except as provided below, and the lien and pledge hereby granted shall be deemed to be and shall be cancelled and discharged; and the holders of the BAN shall, upon such deposit, be entitled to payment of the BAN and the interest thereon at maturity solely from the moneys then on deposit with the Trustee. All moneys and all securities deposited in accordance with the provisions of this Section shall at all times be under the exclusive control of the Trustee, shall be held by it for the sole benefit of the holders of the BAN, and shall be applied solely to the payment of the BAN except as expressly provided in this Section; and the Issuer shall have no rights or powers with respect to nor any interest in such moneys or securities or any part thereof. All moneys remaining on deposit with the Trustee at the close of business on the earlier of (A) the expiration of six months after the latest maturity date of the BAN issued hereunder or (B) the date on which all BAN have been paid in full, shall be released to the Issuer upon its written request and the Trustee shall have no further obligation in respect of the payment of such BAN and thereafter the holder of any BAN shall look to the Issuer for payment.

Section 1.12 A. Supplemental Resolution. Following adoption hereof, and upon receipt of the Purchase Agreement referred to in Section 1.01 A, the Issuer, if it be so advised, will adopt a Supplemental Resolution, which Supplemental Resolution will provide, among other things, the interest rate or rates on the BAN, the interest payment dates, the maturity date and the sale price of the BAN and such other matters as shall be required or desired in connection with issuance of the BAN.

SECTION 1.10 OF THE RULES OF THE BOARD OF DIRECTORS OF THE  
following form, subject to such changes, insertions and deletions as  
the Chairman shall agree to by execution of the BAN:

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
WATERWORKS BOND ANTICIPATION NOTES, SERIES 1979

No.

\$

CLAYWOOD PARK PUBLIC SERVICE DISTRICT, a public service district in Wood County of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay to bearer upon presentation and surrender hereof the sum of

\_\_\_\_\_ , without option of prior redemption, on \_\_\_\_\_, 19\_\_\_\_, with interest at the rate of \_\_\_\_\_ per cent ( \_\_\_\_\_ %) per year payable at maturity. Both principal and interest are payable in lawful money of the United States of America at the principal office of Commercial Banking & Trust Company, Parkersburg, West Virginia, or at the option of the holder, at \_\_\_\_\_, New York, New York.

This Note is one of a series of Notes in the aggregate principal amount of \$1,100,000 duly authorized by the Issuer and issued in anticipation of the issuance of the Water Revenue Bond, Series 1979 (the "Bond"), of the Issuer in the principal sum of \$1,100,000 for aiding in the construction of additions, extensions and improvements for the existing Waterworks (collectively called the "System") of the Issuer.

Farmers Home Administration of the United States Department of Agriculture has agreed to purchase the Bond at least one day prior to the due date of the Issuer of Notes of which this Note is one.

The principal of this Note, and of the issue of Notes of which this Note is one, is payable solely, equally, ratably, and only from the proceeds of sale of the Bond and certain proceeds, if any, from the sale of refunding notes, and, if Farmers Home Administration should not purchase the Bond as agreed, from the Net Revenues of the System defined in the Resolution mentioned below, but as to such Net Revenues on a parity with the Outstanding Obligations also defined in said Resolution. The proceeds of sale of the Bond and certain proceeds, if any, from the sale of the refunding notes have been pledged to the Noteholders to secure payment of the principal of the Notes.

Moneys from the proceeds of sale of the Notes to pay the interest on the Notes have been deposited with Commercial Banking & Trust Company, Parkersburg, West Virginia, as Trustee.

The Notes of the issue of which this Note is one are limited and special obligations of the Issuer, and do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitations or provisions, and the Issuer shall not be obligated to pay this Note and the Notes of the issue of which this Note is one or the interest thereon except from the proceeds of the Notes and certain proceeds from the sale of refunding notes and other sources which have been provided by the Resolution authorizing issuance of the Notes and the Bond.

The Notes of the issue of which this Note is one have been duly authorized by a Resolution and a Supplemental Resolution of the Issuer pursuant to West Virginia Code, Chapter 16, Article 13A.

Every requirement of law relating to the issuance hereof has been duly complied with.

IN WITNESS WHEREOF, CLAYWOOD PARK PUBLIC SERVICE DISTRICT has caused this Note to be signed by the Chairman of its Public Service Board and has caused its seal to be hereto affixed and attested by the Secretary of said Public Service Board, all as of the date below written.

Dated:

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

[SEAL]

By \_\_\_\_\_

Chairman

ATTEST:

\_\_\_\_\_  
Secretary

AUTHORIZATION, TERMS, EXECUTION,  
REGISTRATION AND ISSUE OF BOND

Section 2.01. Authorization of Bond. Subject and pursuant to the provisions of this Resolution, the Bond of the Issuer, to be known as "Water Revenue Bond, Series 1979," is hereby authorized to be issued in the aggregate principal amount of not exceeding One Million One Hundred Thousand Dollars (\$1,100,000) for the purpose of financing a portion of the cost of the construction and acquisition of the Project.

Section 2.02. Description of Bond. The Bond shall be issued in single form, No. 1, and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 2.03. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary.

Section 2.04. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be cancelled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 2.05. Bond and BAN Secured by Pledge of Revenues. The payment of the debt service of the Bond and the BAN shall be secured forthwith by a first lien on the Net Revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bond and the BAN, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond and the BAN as the same become due, all on a parity with the Outstanding Obligations.

Section 2.06. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

WATER REVENUE BOND, SERIES 1979

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

\$1,100,000

No. 1

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

FOR VALUE RECEIVED, CLAYWOOD PARK PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the "Government"), at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of One Million One Hundred Thousand Dollars (\$1,100,000), plus interest on the unpaid principal balance at the rate of five per cent (5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Installments of interest only on the first day of each month for the first twenty-four months after the date hereof and \$5,401, covering principal and interest, thereafter on the first day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or,

to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

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

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

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions, extensions and improvements for the waterworks system (all called the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act") and Resolutions of the Borrower.

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers

future regulations not inconsistent with the express provisions hereof.

This Bond is on a parity in all respects with the Outstanding Obligations described in the Resolution authorizing the Bond.

CLAYWOOD PARK PUBLIC SERVICE DISTRICT  
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Chairman, Public Service Board  
(Title of Executive Official)

Route 5, Box 39  
(P.O. Box No. or Street Address)

Parkersburg, West Virginia 26101  
(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Secretary, Public Service Board  
(Title of Attesting Official)

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

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

ASSIGNMENT

Pay to the Order of \_\_\_\_\_  
 \_\_\_\_\_

UNITED STATES OF AMERICA  
 FARMERS HOME ADMINISTRATION

By \_\_\_\_\_  
 \_\_\_\_\_  
 (Title)

BAN PROCEEDS; REVENUES  
AND APPLICATION THEREOF

Section 3.01. BAN Proceeds; Waterworks Project Construction Account. The proceeds of sale of the BAN, less the respective sums representing interest on the BAN to the respective maturities thereof, shall be deposited on receipt by the Issuer in Commercial Banking & Trust Company, Parkersburg, West Virginia, a member of Federal Deposit Insurance Corporation (the "FDIC"), in a special account hereby created and designated as "Claywood Park Public Service District Waterworks Construction Account" (herein called the "Waterworks Project Construction Account"). The moneys in the Waterworks Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Waterworks Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of construction of the Project, the Issuer will transfer from the Waterworks Project Construction Account and pay to the Government on or before the fifteenth day of each month, such sums as shall be from time to time required to make the monthly installment payments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

If the Issuer shall determine at any time that all funds on deposit in the Waterworks Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing 90 days, the Issuer may invest such excess funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, which shall mature not later than eighteen months after the date of such investment. All such investments and the income therefrom shall be carried to the credit of the Waterworks Project Construction Account.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Waterworks Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 3.02. Covenants of the Issuer as to Revenues and Funds. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of the Bond as follows:

(A) Sewer Revenue Fund. The entire gross revenues derived from the operation of the System, and all parts thereof, and all tap fees received, shall be deposited as collected by the Issuer in a special fund in a bank or trust company in the State of West Virginia which is a member of FDIC, which Fund, known as the Revenue Fund" is hereby established initially with the Bank named in Section

separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided herein.

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

(1) The Issuer shall first each month transfer into the Operation and Maintenance Fund established by the 1967 Resolution with said Bank such sum as the Issuer may determine, in accordance with its budget, to be necessary to pay current Operating Expenses.

(2) The Issuer shall next, by the fifteenth day of each month, simultaneously with transfers from the Revenue Fund required for the Outstanding Obligations pay from the Revenue Fund and pay to the National Finance Office designated in the Bond the amount required to pay the monthly installment required, pursuant to the Bond, to amortize the principal of and the interest on the Bond over the life of the Bond issue.

(3) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit with the said Bank in the Reserve Fund established by the 1967 Resolution, 1/12 of 1/10 of the amount of principal and interest becoming due on the Bond and the Outstanding Obligations in any year until the amount in the Reserve Fund equals the sum of \$135,000, such sum being herein called the "Minimum Reserve," and the "Minimum Reserve" defined in the 1967 Resolution, as amended, being hereby increased accordingly. The Issuer may reduce each monthly payment into the Reserve Fund by 1/120th of the amount on deposit in the Reserve Fund on the date of delivery of the Bond. After the Minimum Reserve has been accumulated in the Reserve Fund, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bond, for transfers into the Bond Fund, and for payment of operating expenses of the System, as shall be required to maintain the Minimum Reserve in the Reserve Fund. Moneys in the Reserve Fund shall be used solely to make up any deficiency for monthly payments into the Bond Fund and of the principal of and interest on the Bond to said National Finance Office as the same shall become due or for prepayment of installments on the Bond, or for mandatory prepayment of the Bond as hereinafter provided, and for no other purpose.

(4) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Repair and Replacement Fund established by the 1967 Resolution with said Bank, the sum of not less than \$2,525 until there has been accumulated in the Repair and Replacement Fund the aggregate sum of \$43,500 and thereafter such sums as shall be required to maintain such amount therein. Moneys in the Repair and Replacement Fund shall be used first to make up any deficiencies for monthly payments of principal of and interest on the Bond and the Outstanding Obligations as the same become due, and next to restore to the Repair and Replacement Fund any sum or sums transferred therefrom. Thereafter, and provided that payments into the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Repair and

improvements for the System, or any part thereof.

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

Whenever the moneys in the Reserve Fund shall be sufficient to prepay the Bond and the Outstanding Obligations in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Bond and the Outstanding Obligations at the earliest practical date and in accordance with applicable provisions hereof and the resolutions authorizing the Outstanding Obligations.

The aforesaid Bank (and any successor appointed by the Issuer) is hereby designated as the Fiscal Agent for the administration of the Reserve Fund and the Repair and Replacement Fund as herein provided and in the 1967 Resolution, and all amounts required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times required, together with written advice stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bond and the Outstanding Obligations and the interest thereon, all on a parity, but the aforesaid Bank shall not be a trustee as to such funds. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

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

The Fiscal Agent shall keep the moneys in the Reserve Fund and the Repair and Replacement Fund invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America and having maturities not exceeding two years. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually in January into the Revenue Fund by the Fiscal Agent.

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

the extension area constituting part of the Project and must obtain user agreements and a \$100 tap fee from each such new user and deposit in the Waterworks Project Construction Account all such tap fees collected. In addition, the Issuer must have received a tap fee in the amount of \$40,000 from Mineral Wells Public Service District.

## GENERAL COVENANTS

Section 4.01. General Statement. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bond and the Outstanding Obligations remaining unpaid; together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 4.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce net revenues equal to not less than 110% of the annual debt service on the Bond and the Outstanding Obligations and to make the payments required herein into the Reserve Fund and the Repair and Replacement Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 4.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond or the Outstanding Obligations are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 4.04. Issuance of Additional Parity Bonds. No additional parity bonds payable out of the revenues of the System shall be issued after the issuance of the Bond pursuant hereto except with the prior written consent of the Purchaser.

Section 4.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation, and maintenance of the System, procure, carry and maintain, so long as the Bond or the Outstanding Obligations remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System in an amount equal to the actual cost 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.

th, and not less than \$200,000 to protect the Issuer from claims or damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bond.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workmen's Compensation Coverage for all Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39.

(e) Fidelity Bonds will be provided as to every member of the Board and as to every officer and employee thereof having custody of the Sewer Revenue Fund or of any revenues or other funds of the District 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 of \$20,000 upon the treasurer, provided, however, that no bond shall be required insofar as custody of the Waterworks Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

(f) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond or the Outstanding Obligations are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 4.06. Statutory Mortgage. For the further protection of the holder of the Bond, 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 the delivery of the Bond, and shall be on a parity with such lien in favor of the Outstanding Obligations.

Section 4.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(B) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bond or herein, or violation of or failure to observe any provision of any pertinent law.

Section 4.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The Receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the Court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 4.09. Fiscal Year; Budget. While the Bond or the Outstanding Obligations 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 thirty days prior to the beginning of each fiscal year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 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 per centum; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 4.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the

Section 4.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 4.12. 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 the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall promptly mail a copy of such audit report to the Purchaser.

Section 4.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond or the Outstanding Obligations are outstanding.

Section 4.14. No Competition. The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 4.15. Concerning Arbitrage. The proceeds of sale of the Bond will not be invested in such a way as to violate the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the arbitrage provisions of Section 103(c) of the Internal Revenue Code of 1954, as amended.

Section 5.01. Initial Schedule of Rates and Charges;  
Rules. A. The schedule of rates, charges and rules for the services and facilities of the System, set forth in the resolution authorizing the 1975 Bond and now in effect, shall be the initial schedule of such rates, charges and rules, subject to change consonant with the provisions hereof:

## MISCELLANEOUS

Section 6.01. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the Bond, the Issuer shall execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter shall file such a Financing Statement in the offices of the Secretary of State of West Virginia and of the Clerk of the County Commission of said County.

Section 6.02. Delivery of Bond No. 1. The Chairman, Secretary and Treasurer of the Governing Body are hereby authorized and directed to cause Bond No. 1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 6.03. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 6.04. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47); and provided further, that although this Resolution amends the 1967 Resolution and the resolution providing for the 1975 Bond, particularly to increase the amounts of reserves required, the 1967 Resolution and said resolution, except as so amended, shall continue in full force and effect.

Section 6.05. 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.



101 South Queen Street  
Martinsburg, West Virginia 25401  
(304) 263-0836

7000 Hampton Center, Suite K  
Morgantown, West Virginia 26505  
(304) 285-2500

155 East Main Street, Suite 300  
Lexington, Kentucky 40507  
(859) 252-2202



McDAVID GRAFF & LOVE LLP

ATTORNEYS AT LAW

600 Quarrier Street  
Charleston, West Virginia 25301

Post Office Box 1386  
Charleston, West Virginia 25325-1386  
(304) 347-1100

[www.bowlesrice.com](http://www.bowlesrice.com)

19 West Cork Street, Suite 102  
Winchester, Virginia 22601  
(540) 723-8877

5th Floor, United Square  
501 Avery Street  
Parkersburg, West Virginia 26101  
(304) 485-8500

May 8, 2008

Claywood Park Public Service District  
Post Office Box 127  
Parkersburg, West Virginia 26102

Re: \$2,900,000 Water Revenue Bond  
(Water System Improvements Project)  
Series 2008

Ladies and Gentlemen:

We have examined a record of the proceedings relating to the issue of the Water Revenue Bond (Water System Improvements Project), Series 2008, of Claywood Park Public Service District, Wood and Wirt Counties, West Virginia (the "District"), in the principal amount of \$2,900,000 dated on the date hereof, bearing interest from the date of delivery (the "Series 2008 Bond"). The Series 2008 Bond bears interest at the rate of 4.375% per annum and is represented by a single bond numbered R-1.

The Series 2008 Bond has been authorized by Resolution duly enacted on May 6, 2008, by the Public Service Board of the District, which is the governing body of the District (the "Bond Resolution").

Interest only on the Series 2008 Bond is payable in monthly installments for the first 24 months after delivery; and thereafter, principal of and interest on the Series 2008 Bond are payable in monthly installments of \$13,079 to and including the 480th month after the date of the Series 2008 Bond, the final installment to be in the sum of the unpaid principal and interest due on the date thereof.

Principal installments on the Series 2008 Bond are subject to payment in advance as provided therein and in the Bond Resolution.

The Bond Resolution and the 2008 Bond provide that the issue is for the purpose of financing the costs of construction and acquisition of additions and improvements to the existing water distribution system of the District (herein called the "System").

The Series 2008 Bond has been awarded to the United States of America at par. There are outstanding obligations of the District which rank on a parity with the Series 2008

Claywood Park Public Service District  
May 8, 2008  
Page 2

Bond as to liens and source of and security for payment, which are the Revenue Bonds of the District dated June 28, 2006 (Series 2006 A, Series 2006 B, and Series 2006 C), June 1, 2003, December 19, 2002, January 23, 1998, August 18, 1997, April 3, 1995, December 1, 1993, January 7, 1979 and March 3, 1975, issued in the original principal amounts of \$4,175,000, \$870,000, \$2,563,000 \$975,000, \$1,250,000, \$750,000, \$145,000, \$190,000, \$410,000, \$1,100,000, and \$685,000, respectively (collectively, the "Prior Bonds"), which are held by the United States Department of Agriculture, Farmers Home Administration or its successors or assigns, except with respect to the Series 2003 Bonds dated June 1, 2003, which are held by others.

It is our opinion that:

1. The District is a duly organized and presently existing public service district and a political subdivision of the State of West Virginia with full power and authority to construct and maintain the System and issue and sell the Series 2008 Bond, all under the provisions of Chapter 16, Article 13A, of the Code of West Virginia of 1931, as amended, (the "Act") and other applicable provisions of law.
2. The members and officers of the Public Service Board of the District have been duly and properly appointed and elected, have taken the requisite oaths and are authorized to act in their respective capacities in behalf of the District.
3. The District has legally and effectively adopted the Bond Resolution and other resolutions in connection with the Series 2008 Bond and has sold and delivered the Series 2008 Bond to the United States of America.
4. The execution and delivery of the Series 2008 Bond and other documents by the District will not conflict with or cause a breach or default on the District's part under any other agreement to which the District is a party.
5. The Series 2008 Bond constitutes a valid and legally enforceable special obligation of the District secured by and payable solely from a first lien on and pledge of the net revenues of the System on a parity with the lien of the District's Prior Bonds, all in accordance with the terms of the Series 2008 Bond and the Bond Resolution.
6. The Series 2008 Bond is not being issued on the basis that the interest thereon is or will be excluded from gross income for federal income tax purposes; therefore, the interest on the Series 2008 Bond is not excluded from gross income for federal income tax purposes. We express no opinion regarding other federal tax consequences arising with respect to the Series 2008 Bond.
7. The Series 2008 Bond is, by statute, exempt from all taxation by the State of West Virginia and other taxing bodies of the State.

Claywood Park Public Service District  
May 8, 2008  
Page 3

8. To the best of our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transaction contemplated by that certain Letter of Conditions, dated June 13, 2006, from the United States Department of Agriculture to the District, the Bond Resolution, construction of the Project, operation of the System or the validity of the Series 2008 Bond or the issuance of the Series 2008 Bond or the collection or pledge of the net revenues of the System therefor or for the Series 2008 Bond.

It is to be understood that the rights of the holders of the Series 2008 Bond and the enforceability of the Series 2008 Bond, the Bond Resolution and liens and pledges set forth therein may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights (to the extent constitutionally applicable) and that the enforcement thereof may also be subject to the exercise of judicial discretion in appropriate cases.

Sincerely yours,

BOWLES RICE MCDAVID GRAFF & LOVE LLP

*Bowles Rice McDavid Graff & Love LLP*

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CLAYWOOD PARK PUBLIC SERVICE DISTRICT

\$2,900,000 Water Revenue Bond  
(Water System Improvements Project)  
Series 2008

RECEIPT FOR SERIES 2008 BOND AND TRANSCRIPTS

The undersigned, for the United States Department of Agriculture, hereby certifies as follows:

1. On the 8th day of May, 2008, at Parkersburg, West Virginia, the undersigned received from the Claywood Park Public Service District the single Claywood Park Public Service District Water Revenue Bond (Water System Improvements Project), Series 2008, No. R-1 (the "Bond"), in the principal amount of \$2,900,000 dated as of the date hereof, bearing interest at the rate of 4.375% per annum, payable in monthly installments as stated in the Series 2008 Bond.

2. At the time of such receipt, the 2008 Bond had been executed and sealed by the Chairman and Secretary of the Public Service Board of the District.

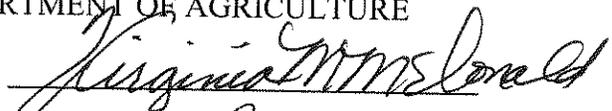
3. At the time of such receipt, there was paid to the District the sum of \$230,000.00 from the proceeds of the Series 2008 Bond.

4. At the time of such receipt, there was also received by the undersigned three sets of Bond transcript documents.

WITNESS my signature on the 8th day of May, 2008.

UNITED STATES OF AMERICA  
DEPARTMENT OF AGRICULTURE

By:



Its:

RDS  
(Title)



CLAYWOOD PARK PUBLIC SERVICE DISTRICT

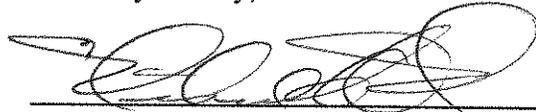
\$2,900,000 Water Revenue Bond  
(Water System Improvements Project)  
Series 2008

RECEIPT FOR SERIES 2008 BOND PROCEEDS

The undersigned, for the Claywood Park Public Service District, Wood and Wirt Counties, West Virginia, hereby certifies that on the 8th day of May, 2008, at Parkersburg, West Virginia, the undersigned received from the United States Department of Agriculture \$230,000.00 of the proceeds from the single Claywood Park Public Service District Water Revenue Bond (Water System Improvements Project), Series 2008, No. R-1 (the "Series 2008 Bond"), in the principal amount of \$2,900,000 dated as of May 8, 2008, bearing interest at the rate of 4.375% per annum, payable in monthly installments as stated in the Series 2008 Bond.

At the time of such receipt, the Series 2008 Bond had been executed and sealed by the Chairman and Secretary of the Public Service Board of the District.

WITNESS my signature on the 8th day of May, 2008.



Chairman, Public Service Board  
Claywood Park Public Service District



WATER REVENUE BOND (WATER SYSTEM IMPROVEMENTS PROJECT),  
SERIES 2008

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

\$2,900,000.00

No. R-1

Date: May 8, 2008

CLAYWOOD PARK PUBLIC SERVICE DISTRICT (the "Issuer"), for value received, promises to pay to the order of the United States of America, (the "Purchaser"), or its registered assigns, at its National Finance Office, St. Louis, Missouri, 63103, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of \$2,900,000.00, plus interest on the unpaid principal balance at the rate of four and three-eighths per cent (4.375%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Installments of interest only commencing 30 days following delivery of the Series 2008 Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof and \$13,079, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Series 2008 Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount hereof is not advanced at the time of closing, the proceeds hereof shall be advanced to Issuer as requested by Issuer and approved by the Purchaser 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 hereon 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. Refunds and extra payments, as defined in the regulations of the Purchaser according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Series 2008 Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the United States of America at any time assigns this Series 2008 Bond and insures the payment thereof, Issuer shall continue to make payments to the United States of America as collection agent for the holder.

While this Series 2008 Bond is held by an insured lender, prepayments made by Issuer may, at the option of the Purchaser, be remitted by the Purchaser to the Holder promptly or, except for final payment, be retained by the Purchaser and remitted to the Holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Purchaser on an annual

installment due date basis, shall be the date of the United States Treasury check by which the Purchaser remits the payment to the Holder. The effective date of any prepayment retained and remitted by the Purchaser to the Holder on an annual installment due date basis shall be the date of the prepayment by Issuer and the Purchaser will pay the interest to which the Holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the Holder.

Any amount advanced or expended by the Purchaser for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Purchaser 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 Issuer to the Purchaser without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Purchaser.

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 rates and terms in or near its community for loans for similar purposes and periods of time.

This Series 2008 Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing such funds for financing all or part of the costs of construction of repairs, replacements, expansions and improvements to the waterworks system (the "System") of the Issuer, is payable solely from the Revenues to be derived from the operation of the System after there have been first paid from such Revenues the reasonable current costs of operation and maintenance of the System. This Series 2008 Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation.

Registration of this Series 2008 Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Secretary of the Issuer, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Resolutions hereinafter described, and upon surrender and cancellation of this Series 2008 Bond. Upon such transfer a new Series 2008 Bond or Series 2008 Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Series 2008 Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Secretary of the Issuer.

This Series 2008 Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (herein called the "Act") and Resolutions of the Issuer adopted on December 27, 1979, December 1, 1993, April 3, 1995, August 18, 1997, January 23, 1998, December 17, 2002, May 20, 2003, June 26, 2006 and May 6, 2008.

If at any time it shall appear to the Purchaser that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at Purchaser's request, apply for and accept such loan in sufficient amount to repay the Purchaser.

This Series 2008 Bond is given as evidence of a loan to Issuer made or insured by the Purchaser pursuant to the Consolidated Farmers Home Rural Development Act. This Series 2008 Bond shall be subject to the present regulations of the Farmers Home Administration and its successors and assigns and to future regulations not inconsistent with the express provisions hereof.

This Series 2008 Bond is issued on a parity in all respects with the Series 1975 Bond, the Series 1979 Bond, the Series 1993 B Bond, the Series 1995 Bond, the Series 1997 A Bond, the Series 1998 Bond, the Series 2002 Bond, the Series 2003 Bonds, the Series 2006 A Bond, the Series 2006 B Bond and the Series 2006 C Bond described in the Resolutions above described.

CLAYWOOD PARK PUBLIC SERVICE DISTRICT

Attest:

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

By:

\_\_\_\_\_  
Chairman, Public Service Board

[CORPORATE SEAL]



**WEST VIRGINIA MUNICIPAL BOND COMMISSION  
NEW ISSUE REPORT FORM**

Suite 500  
8 Capitol Street, Charleston, WV 25301  
(304) 558-3971

Date of Report: May 8, 2008

ISSUE: <u>Claywood Park Public Service District Water Revenue Bond</u> <u>(Water System Improvements Project) Series 2008</u>	
ADDRESS: <u>P. O. Box 127</u> <u>Parkersburg, West Virginia 26102</u>	COUNTY: <u>Wood and Wirt Counties</u>
PURPOSE OF ISSUE: New Money <input checked="" type="checkbox"/> Refunding <input type="checkbox"/>	Refunds issue(s) dated: _____
ISSUE DATE <u>May 8, 2008</u>	CLOSING DATE: <u>May 8, 2008</u>
ISSUE AMOUNT: \$ <u>2,900,000</u>	RATE: <u>4.375%</u>
1 <sup>st</sup> DEBT SERVICE DUE: <u>Not Applicable</u>	1 <sup>st</sup> PRINCIPAL DUE: <u>Not Applicable</u>
1 <sup>st</sup> DEBT SERVICE AMOUNT: \$ <u>Not Applicable</u>	PAYING AGENT: <u>None</u>
BOND COUNSEL: <u>Bowles Rice McDavid</u> <u>Graff &amp; Love LLP</u>	UNDERWRITER'S COUNSEL: _____
Contact Person: <u>Camden P. Siegrist</u>	Contact Person: _____
Phone: <u>(304) 347-1129</u>	Phone: _____
CLOSING BANK: <u>WesBanco Bank, Inc.</u>	ESCROW TRUSTEE: _____
Contact Person: <u>Joe Campbell, Vice President</u>	Contact Person: _____
Phone: <u>(304) 480-2500</u>	Phone: _____
KNOWLEDGEABLE ISSUE CONTACT:	OTHER: _____
Contact Person: <u>Todd Grinstead</u>	Contact Person: _____
Position: <u>General Manager</u>	Function: _____
Phone: <u>(304) 422-6042</u>	Phone: _____
DEPOSITS TO MBC AT CLOSE: _____	Accrued Interest:\$ _____
By: _____ Wire _____	Capitalized Interest: _____
_____ Check _____	Reserve Account:\$ _____
	Other: _____
REFUNDS & TRANSFERS BY MBC AT CLOSE:	
By: _____ Wire _____	_____ To Escrow Trustee: \$ _____
_____ Check _____	_____ To Issuer: \$ _____
_____ IGT _____	_____ To Cons. Invest. Fund \$ _____
	_____ To _____ \$ _____
NOTES: <u>The applicable Bond Resolution, a copy of which is provided herewith, establishes the Series 2008 Bond Reserve Account with the Municipal Bond Commission. Debt service payments will be paid by the District directly to the Bondholder.</u>	

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____