

HARDY COUNTY PUBLIC SERVICE DISTRICT

**Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)**

Date of Closing: March 3, 2009

BONDS TRANSCRIPT

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(West Virginia Infrastructure Fund)**

BOND TRANSCRIPT

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HARDY COUNTY PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

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HARDY COUNTY PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF HARDY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$608,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

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

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

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed public sewerage facilities of the Issuer, consisting of installation of approximately 3,400 linear feet of 12" gravity sewer pipe and 12 manholes to connect the existing Caledonia Heights sewer system to the

Town of Moorefield along US Route 220, together with all appurtenant facilities (collectively, the "Project"), which constitute public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the Project and any further improvements or extensions thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Infrastructure Fund pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), in the total aggregate principal amount of not more than \$608,000 (the "Series 2009 A Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2009 A Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2009 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2009 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), in form satisfactory to the respective parties (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are no outstanding bonds or obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds or are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest, if any, on the Series 2009 A Bonds, and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2009 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the Council and the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2009 A Bonds or such final order will not be subject to appeal.

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

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2009 A Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the Council under the Act.

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

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

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

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

"Bonds" means the Series 2009 A Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

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

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

"Closing Date" means the date upon which there is an exchange of the Series 2009 A Bonds for all or a portion of the proceeds of the Series 2009 A Bonds from the Authority.

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

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

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

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

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

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

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

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

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

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

"Grants" means all monies received by the Issuer on account of any Grant for the Project.

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

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

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

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

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, by and between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2009 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 2009 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2009 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

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

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

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

"Paying Agent" means the Commission or other entity designated as such for the Series 2009 A Bonds in the Supplemental Resolution.

"Project" means the Project as described in Section 1.02(B) hereof.

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

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such

repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

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

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

"Registrar" means the Bond Registrar.

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

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

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

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

"Series 2009 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), authorized to be issued hereby.

"Series 2009 A Bonds Construction Trust Fund" means the Series 2009 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2009 A Bonds Reserve Account" means the Series 2009 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2009 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

"Series 2009 A Bonds Sinking Fund" means the Series 2009 A Bonds Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2009 A Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2009 A Bonds, and not so included, may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2009 A Bonds, or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account.

"System" means the complete properties of the Issuer for the collection, treatment, purification or disposal of liquid or solid wastes, sewerage or industrial wastes, in its entirety or any integral part thereof, and all sewerage facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the sewerage system.

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

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Chairman or the Secretary shall mean that such Bonds, certificates or other document may be executed by an Acting Chairman or Acting Secretary.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost not to exceed \$608,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and has entered into or will enter into contracts for the acquisition and construction of the Project, in an amount compatible with the financing plan submitted to the Authority and the Council.

The cost of the Project is estimated not to exceed \$608,000, which will be obtained from proceeds of the Series 2009 A Bonds.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest, if any, on the Series 2009 A Bonds, funding a reserve account for the Series 2009 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2009 A Bonds of the Issuer. The Series 2009 A Bonds shall be issued as a single bond, designated as "Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund)," in the principal amount of not more than \$608,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 A Bonds remaining after funding of the Series 2009 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest on the Series 2009 A Bonds, if any, shall be deposited in or credited to the Series 2009 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2009 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2009 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2009 A Bonds, if any, shall be paid by check or draft of the Paying Agent, or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2009 A Bonds. The Series 2009 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

Section 3.03. Execution of Bonds. The Series 2009 A Bonds shall be executed in the name of the Issuer by the Chairman, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2009 A Bonds shall cease to be such officer of the Issuer before the Series 2009 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2009 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2009 A Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bonds, substantially in the forms set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bonds shall be conclusive evidence that such Bonds have been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on the Series 2009 A Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2009 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of

transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2009 A Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2009 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2009 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2009 A Bonds shall be secured by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 A Bonds, and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 A Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2009 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 A Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2009 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2009 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HARDY COUNTY PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2009 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That on this _____ day of _____, 2009, HARDY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Hardy County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of THREE HUNDRED THIRTY-THREE THOUSAND DOLLARS (\$ _____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 200-, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2009.

This Bond is issued: (i) to pay the costs of acquisition and construction of public sewerage facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on _____, 2009, and a Supplemental

Resolution duly adopted by the Issuer on _____, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THERE ARE NO OUTSTANDING BONDS OR OBLIGATIONS OF THE ISSUER WHICH RANK ON A PARITY WITH THE BONDS OR ARE SECURED BY REVENUES OR ASSETS OF THE SYSTEM.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 A Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All monies received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

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

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

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

[SEAL]

Chairman

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 A Bond described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2009.

THE HUNTINGTON NATIONAL BANK,
as Registrar

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ _____

EXHIBIT B

ASSIGNMENT

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

Dated: _____, 20____.

In the presence of:

Section 3.11. Sale of Bonds: Approval and Ratification of Execution of Loan Agreement. The Series 2009 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Chairman is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated into this Bond Legislation.

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

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

The following special funds or accounts are hereby created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Series 2009 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission.

The following special funds or accounts are hereby created with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2009 A Bonds Sinking Fund; and
- (2) Series 2009 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.

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

- (1) The Issuer shall first, each month, pay from the Revenue Fund the Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 A Bonds Sinking Fund and the next quarterly principal payment

date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2009 A Bonds, if not fully funded upon issuance of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 A Bonds Reserve Requirement.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund an amount equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvest in Qualified Investments. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2009 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2009 A Bonds, as the same shall become due. Monies in the Series 2009 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 A Bonds, as the same shall come due, when other monies in the Series 2009 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the

Project, be deposited in the Series 2009 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2009 A Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2009 A Bonds Reserve Account which result in a reduction in the balance therein to below the Series 2009 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2009 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund or the Series 2009 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 A Bonds, under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2009 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

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

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

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

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

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

J. All Tap Fees shall be deposited by the Issuer, as received, in the Series 2009 A Bonds Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2009 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 A Bonds, there shall be deposited with the Commission in the Series 2009 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 A Bonds for the period commencing on the date of issuance of the Series 2009 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2009 A Bonds, there shall be deposited with the Commission in the Series 2009 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2009 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 A Bonds Construction Trust Fund and applied solely to payment of the costs of the acquisition and construction of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2009 A Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 A Bonds shall be applied as directed by the Council.

Section 6.02. Disbursements From the Bond Construction Trust Fund. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments of all costs shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 A Bonds Construction Trust Fund shall be made only after submission to and approval from the Council, of a certificate, signed by an Authorized Officer stating that:

- (a) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (b) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

- (c) Each of such costs has been otherwise properly incurred; and
- (d) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2009 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

The Issuer shall expend all proceeds of the Series 2009 A Bonds within 3 years of the date of issuance of the Council's Bonds, the proceeds of which were used to make the loan to the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2009 A Bond shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2009 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2009 A Bonds shall be secured by a first lien on the Net Revenues derived from the System. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2009 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in and approved by the Recommended Decision of the Public Service Commission of West Virginia entered on January 30, 2006, in Case No 05-1004-PSD-CN, which became Final Order on February 19, 2006, and Commission Order dated April 10, 2006, and Recommended Decision entered November 20, 2008, which became Final Order on December 10, 2008 and such rates are hereby adopted.

So long as the Series 2009 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth

in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2009 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Series 2009 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2009 A Bonds, immediately be remitted to the Commission for deposit in the Series 2009 A Bonds Sinking Fund, and, with the written permission of the Authority and the Council, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2009 A Bonds. Any balance remaining after the payment of the Series 2009 A Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with a professional engineer that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts

received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in this Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, and source of and security for payment from such revenues and in all other respects, to the Series 2009 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2009 A Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2009 A Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the Council and without complying with the conditions and requirements herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 A Bonds.

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

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified

Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer and approved by the Public Service Commission of West Virginia, the time for appeal of which shall have expired prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject

to the prior and superior liens of the Series 2009 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 A Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

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

The Issuer shall file with the Council, the Authority, or any other original purchaser of the Series 2009 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation, and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto) and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 A Bonds, and shall submit said report to the Council and the Authority, or any other original purchaser of the Series 2009 A Bonds. Such audit report submitted to the Authority and the Council shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

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

Section 7.09. Rates. Prior to the issuance of the Series 2009 A Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to

inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit respectively in the Series 2009 A Bonds Reserve Account and the reserve accounts for obligations on a parity with the Series 2009 A Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall within 30 days of adoption thereof mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the Council and to any Holder of any Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority and the Council and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the

Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

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

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

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

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of

West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either the water system or the System until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer shall use diligent efforts to enter into a termination agreement with the provider of such water services, subject to any required approval of such agreements by the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2009 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

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

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

(5) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

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

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

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and State requirements and standards. The Issuer shall take all steps to properly operate and maintain the System and make the necessary replacements due to normal wear and tear so long as the Series 2009 A Bonds are outstanding.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2009 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect.

Section 7.18. [RESERVED]

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, and shall take effect immediately upon delivery of the Series 2009 A Bonds.

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

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

Section 7.21. Securities Laws Compliance. The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.22. Contracts; Change Orders, Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Council for written approval. The Issuer shall obtain the written approval of the Council before expending any proceeds of the Series 2009 A Bonds held in "contingency" as set forth in the schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council before expending any proceeds of the Series 2009 A Bonds made available due to bid or construction or project underruns.

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

ARTICLE VIII

INVESTMENT OF FUNDS; USE OF PROCEEDS

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest, if any, on the Series 2009 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to the Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 A Bonds as a condition to issuance of the Series 2009 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code; issued by the Authority or the Council, as the case may be, from which the proceeds of the

Series 2009 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the Council, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 A Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2009 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2009 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, or Paying Agent, or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2009 A Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2009 A Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2009 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2009 A Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2009 A Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on

behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2009 A Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 A Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 A Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2009 A Bonds from gross income of the holders thereof.

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

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution, the Supplemental Resolution, or the Series 2009 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. All orders or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and

in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 25th day of February, 2009.



Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of HARDY COUNTY PUBLIC SERVICE DISTRICT on the 25th day of February, 2009.

Dated: March 3, 2009.

[SEAL]

Connie E. Sherman
Secretary

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF HARDY COUNTY PUBLIC SERVICE DISTRICT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO THE BONDS; AUTHORIZING AND APPROVING THE SALE OF THE BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Hardy County Public Service District (the "Issuer") has duly and officially adopted a bond resolution on February 25, 2009, (the "Bond Resolution" or the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF HARDY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$608,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF

SUCH BONDS AND ADOPTING OTHER PROVISIONS
RELATING THERETO.

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

WHEREAS, the Bond Resolution provides for the issuance of Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), of the Issuer (the "Bonds" or "Series 2009 A Bonds"), in the principal amount not to exceed \$608,000, and has authorized the execution and delivery of the loan agreement relating to the Series 2009 A Bonds (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Resolution it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Series 2009 A Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates, the sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

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

Section 1. Pursuant to the Bond Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$608,000. The Series 2009 A Bonds shall be dated the date of delivery thereof, shall finally

mature March 1, 2049, and shall bear no interest. The principal of the Series 2009 A Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including March 1, 2049, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2009 A Bonds. The Series 2009 A Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2009 A Bonds.

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

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Series 2009 A Bonds under the Bond Resolution and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Series 2009 A Bonds under the Bond Resolution.

Section 6. The Issuer does hereby appoint and designate Pendleton Community Bank, Moorefield, West Virginia, to serve as Depository Bank under the Bond Resolution.

Section 7. Series 2009 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2009 A Bonds proceeds in the amount of \$15,396 shall be deposited in the Series 2009 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2009 A Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2009 A Bonds

Construction Trust Fund for payment of the costs of the acquisition and construction of the Project, including, without limitation, costs of issuance of the Series 2009 A Bonds and related costs.

Section 10. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds to be issued hereby and by the Bond Resolution approved and provided for, to the end that the Series 2009 A Bonds may be delivered on or about March 3, 2009, to the Authority pursuant to the Loan Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof with proceeds of the Bonds, are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer hereby determines that it is in the best interest of the Issuer to invest all monies in the funds and accounts established by the Bond Resolution held by the Depository Bank until expended, subject to any limitation of the Purchaser with respect of the proceeds of the Bonds, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 13. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 14. The Issuer shall not spend, or request the disbursement, of the \$115,000 (future change orders), until such change order or change orders have been approved by a majority vote of the Council.

Any change orders with regard to the Green River Contract or the construction/ project contingency shall be approved by the Council.

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

[Remainder of Page Intentionally Blank]

Adopted this 25th day of February, 2009.

HARDY COUNTY
PUBLIC SERVICE DISTRICT

By: Matthew R. Gage
Its: Chairman

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of Hardy County Public Service District on the 25th day of February, 2009.

Dated: March 3, 2009

[SEAL]

Connie E. Sherman
Secretary

02.20.09
378080.00005

IC-1
(11/01/04)

LOAN AGREEMENT

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

HARDY COUNTY PUBLIC SERVICE DISTRICT
(2008S-1011)

(Governmental Agency)

WITNESSETH:

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

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

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

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

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

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

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

(100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority and Council.

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

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

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

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as

equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the AReserve Requirement@), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

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

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

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds

revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

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

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

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

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the

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

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

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

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

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

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

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

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

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

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

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

7.10 This Loan Agreement shall terminate upon the earlier of:

- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

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

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

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least ___ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and my firm¹ has ascertained that all _____

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

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

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

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

Ladies and Gentlemen:

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

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

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

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Governmental Agency on _____, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior

EXHIBIT C

MONTHLY FINANCIAL REPORT

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

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

 Name of Person Completing Form

 Address

 Telephone

EXHIBIT D

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest \$

Principal \$

Total: \$

Reserve Account: \$

Witness my signature this ___ day of _____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

**SCHEDULE Y
DEBT SERVICE SCHEDULE**

Period Ending	Principal	Interest	Debt Service
12/1/09	3,849.		3,849.
3/1/10	3,849.		3,849.
6/1/10	3,849.		3,849.
9/1/10	3,849.		3,849.
12/1/10	3,849.		3,849.
3/1/11	3,849.		3,849.
6/1/11	3,849.		3,849.
9/1/11	3,849.		3,849.
12/1/11	3,849.		3,849.
3/1/12	3,849.		3,849.
6/1/12	3,849.		3,849.
9/1/12	3,849.		3,849.
12/1/12	3,849.		3,849.
3/1/13	3,849.		3,849.
6/1/13	3,849.		3,849.
9/1/13	3,849.		3,849.
12/1/13	3,848.		3,848.
3/1/14	3,848.		3,848.
6/1/14	3,848.		3,848.
9/1/14	3,848.		3,848.
12/1/14	3,848.		3,848.
3/1/15	3,848.		3,848.
6/1/15	3,848.		3,848.
9/1/15	3,848.		3,848.
12/1/15	3,848.		3,848.
3/1/16	3,848.		3,848.
6/1/16	3,848.		3,848.
9/1/16	3,848.		3,848.
12/1/16	3,848.		3,848.
3/1/17	3,848.		3,848.
6/1/17	3,848.		3,848.
9/1/17	3,848.		3,848.
12/1/17	3,848.		3,848.
3/1/18	3,848.		3,848.
6/1/18	3,848.		3,848.
9/1/18	3,848.		3,848.
12/1/18	3,848.		3,848.
3/1/19	3,848.		3,848.
6/1/19	3,848.		3,848.
9/1/19	3,848.		3,848.
12/1/19	3,848.		3,848.
3/1/20	3,848.		3,848.
6/1/20	3,848.		3,848.
9/1/20	3,848.		3,848.
12/1/20	3,848.		3,848.
3/1/21	3,848.		3,848.

Period Ending	Principal	Interest	Debt Service
12/1/33	3,848.		3,848.
3/1/34	3,848.		3,848.
6/1/34	3,848.		3,848.
9/1/34	3,848.		3,848.
12/1/34	3,848.		3,848.
3/1/35	3,848.		3,848.
6/1/35	3,848.		3,848.
9/1/35	3,848.		3,848.
12/1/35	3,848.		3,848.
3/1/36	3,848.		3,848.
6/1/36	3,848.		3,848.
9/1/36	3,848.		3,848.
12/1/36	3,848.		3,848.
3/1/37	3,848.		3,848.
6/1/37	3,848.		3,848.
9/1/37	3,848.		3,848.
12/1/37	3,848.		3,848.
3/1/38	3,848.		3,848.
6/1/38	3,848.		3,848.
9/1/38	3,848.		3,848.
12/1/38	3,848.		3,848.
3/1/39	3,848.		3,848.
6/1/39	3,848.		3,848.
9/1/39	3,848.		3,848.
12/1/39	3,848.		3,848.
3/1/40	3,848.		3,848.
6/1/40	3,848.		3,848.
9/1/40	3,848.		3,848.
12/1/40	3,848.		3,848.
3/1/41	3,848.		3,848.
6/1/41	3,848.		3,848.
9/1/41	3,848.		3,848.
12/1/41	3,848.		3,848.
3/1/42	3,848.		3,848.
6/1/42	3,848.		3,848.
9/1/42	3,848.		3,848.
12/1/42	3,848.		3,848.
3/1/43	3,848.		3,848.
6/1/43	3,848.		3,848.
9/1/43	3,848.		3,848.
12/1/43	3,848.		3,848.
3/1/44	3,848.		3,848.
6/1/44	3,848.		3,848.
9/1/44	3,848.		3,848.
12/1/44	3,848.		3,848.
3/1/45	3,848.		3,848.
6/1/45	3,848.		3,848.
9/1/45	3,848.		3,848.
12/1/45	3,848.		3,848.
3/1/46	3,848.		3,848.

SCHEDULE Z

Special Condition: The Governmental Agency shall not spend, or request the disbursement, of the \$115,000 (future change orders), until such change order or change orders have been approved by a majority vote of the Council.

Any change orders with regard to the Green River Contract or the construction/project contingency shall be approved by the Council.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

2-19-06

Entered: January 30, 2006

CASE NO. 05-1004-PSD-CN

HARDY COUNTY PUBLIC SERVICE DISTRICT,
a public utility, Moorefield, Hardy County,
Application for a certificate of convenience
and necessity to construct a sewage lift
station and force main to transfer all
wastewater flows from the Caledonia Heights
subdivision to the Town of Moorefield for
treatment and disposal.

RECOMMENDED DECISION

On July 8, 2005, the Hardy County Public Service District (Utility) filed an application for a certificate of convenience and necessity to construct improvements to the wastewater system that services the Caledonia Heights subdivision near Moorefield. The project is estimated to cost \$355,000, and will be financed with a loan from the USDA-Rural Development. The customers are currently being served by the Hardy County Rural Development Authority (RDA), an agency created by the Hardy County Commission. The RDA plans to transfer the customers and its collection system to the Utility.

On July 11, 2005, the Commission required the Utility to provide notice of its filing in Hardy County.

The Commission received numerous protests regarding the application.

On August 24, 2005, the Commission referred the matter requiring a decision on or before February 3, 2006.

On October 6, 2005, Staff indicated that rates needed to support the project would be slightly higher than those proposed by the Utility. Staff did not, at that time, file a final recommendation concerning the project.

By Procedural Order issued October 17, 2005, the matter was set for hearing on November 29, 2005, and the Utility was ordered to publish notice of the hearing. The hearing was held as scheduled. Thomas R. Michael, Esquire, appeared on behalf of the Utility. Lisa Wansley-Layne, Esquire, appeared on behalf of Staff. Although public comment was requested and appearances were taken, no one from the Caledonia Heights community petitioned to intervene, entered an appearance or made public comment.

On November 30, 2005, Gary Ecker filed a letter demanding another hearing and suggesting that residents of Caledonia Heights did not understand the procedure at the earlier hearing.

On December 1, 2005, the Utility filed a copy of an asset transfer agreement between the Utility and the RDA.

On December 2, 2005, Staff recommended approval of the certificate. Staff also recommended that the Commission grant a rate increase of 125% to become effective immediately, with an additional rate increase of 385% over the intermediate rates to become effective after the project is completed. Staff made several other operational recommendations, including requiring the Utility to submit quarterly inflow and infiltration (I&I) reports and to submit information regarding customer downspouts connected to the system. Staff recommended a rate review within two years of the final order of the Commission. Staff indicated that, if the two-step rate increase was adopted, the individual customers should be notified and opportunity be given for additional protest.

On December 9, 2005, the Utility objected to several of the recommendations made by Staff.

By Procedural Order issued December 13, 2005, the matter was set for an additional hearing on January 12, 2006. The Utility was also ordered to mail to each of its proposed customers a notice associated with the Staff recommendation that there be a two-step rate increase, with the initial rate being implemented almost immediately.

The second hearing was held as scheduled. Thomas R. Michael, Esquire, appeared on behalf of the Utility. John Auville, Esquire, appeared on behalf of Staff. Gary Ecker, Kenneth Pack and Philip Inskeep were all granted party status and each appeared on his own behalf.

EVIDENCE

Clay Riley is a professional engineer who was hired to evaluate alternatives to the current treatment process for the Caledonia Heights subdivision. (Tr. I 10).¹ The RDA is currently violating its NPDES permit. (Tr. I 10, 11). There is frequently too much flow for the lagoon to handle. (Tr. I 11). The Department of Environmental Protection (DEP)

¹References to the first hearing transcript are Tr. I and references to the second hearing are Tr. II.

has filed administrative orders regarding RDA's violation of its NPDES and the matter is pending in Circuit Court. (Tr. I 17).

Mr. Riley performed smoke testing, video monitoring, flow metering and other tests of the system. (Tr. I 12). Mr. Riley considered replacing the collection system to reduce I&I and upgrading the lagoon. (Tr. I 12). Mr. Riley estimated the cost of line replacement at approximately \$801,000. (Tr. I 13). He estimated the cost of transferring the sewer flows to the City of Moorefield (Moorefield) for treatment at \$355,000. (Tr. I 13).

The RDA and Mr. Riley concluded that upgrading the lagoon would not be a very good long-term solution given the constantly changing environmental regulations. (Tr. I 13). The lagoon technology is very old technology. (Tr. I 13). Mr. Riley determined that transferring the sewage to Moorefield would be more cost effective. (Tr. I 13, 14).

Mr. Riley testified that there were I&I problems. (Tr. I 14). The RDA has sent letters to some homeowners trying to get them to correct I&I problems. (Tr. I 14). The report drafted by Mr. Riley concluded that the existing collection system had "excessive I&I." (Utility Ex. 3 at 7). A study of manhole #2 showed that, on a dry day, May 3, 2003, it had a flow of 12.64 gallons per minute, but, on a rainy day, May 10, 2003, it had a flow of 82.97 gallons per minute. (Id. at 4). The report indicated that "this excessive I&I could be the result of cracked and broken sanitary sewer lines, gutters and drains tied directly into sanitary sewer lines, or sanitary sewer manholes in low lying areas that collect water." (Id. at 7.).

The proposed project includes a new lift station and new four-inch force main to deliver the effluent to Moorefield for treatment. (Tr. I 16).

The project costs do not include abandoning the lagoon. (Tr. I 16). Mr. Riley admitted that the lagoon will eventually need to be remediated. (Tr. I 16). The RDA will retain ownership of the lagoon and its associated liabilities. (Tr. I 17). The Utility will be the entity building the project and serving the customers in the future. (Tr. I 17).

Mr. Riley explained that the engineering fees were a high percentage of the cost because of the video taping, smoke testing and flow monitoring already accomplished. (Tr. I 19). He also explained that the small size of the project results in a larger percentage being engineering fees. (Tr. I 19, 20).

The O&M expenses projected by the project are based upon actual water sold plus an allowable I&I. (Tr. I 23). The project does not include a master meter estimated in the construction cost estimate. (Tr. I 23). The engineer allowed 20% to 25% for I&I. (Tr. I 23, 24). Mr. Riley did not look at a possible alternative of Moorefield taking over the Caledonia Heights customers. (Tr. I 27).

Nancy Roth is a CPA who does work for the RDA and the Utility. (Tr. I 29, 30). Ms. Roth believes that the Staff rates are slightly higher

than those proposed by the Utility because the Staff including funding the reserve requirements. (Tr. I 31).

Mallie Combs-Snider has been the executive director of both the RDA and the Utility since 1984. (Tr. I 33). The RDA is a county agency responsible for economic development and job growth. (Tr. I 33, 34). The Utility was created by Hardy County to provide water and sewer service throughout the county. (Tr. I 34). The RDA was created in 1965 and its first project was Caledonia Heights. (Tr. I 34). It developed the subdivision including the water and sewer infrastructure. (Tr. I 34).

RDA has been providing Caledonia Heights utility service since 1968. (Tr. I 34). RDA also has 10 to 15 sewer customers in the Robert C. Byrd Industrial Park (Industrial Park). (Tr. I 34, 35). After the project, the RDA will still be in the sewer business, but only in the Industrial Park. (Tr. I 35). The RDA would still be providing water service for the Caledonia Heights customers. (Tr. I 35). The Utility's water rate for minimum usage of 3,000 or less is \$21.00 a month, and the RDA's rate for the same usage is \$8.31 a month. (Tr. I.35).

Utility Ex. 7 is an intergovernmental agreement between the RDA and the Utility which was dated in 1988. (Tr. I 37). The intergovernmental agreement allows the Utility and the RDA to share common staff and other operational needs. (Tr. I 37). Ms. Combs-Snider does not believe that the joint operating agreement has ever been submitted to the Commission for its approval. (Tr. I 56, 57). The RDA and the Utility have independent boards, but they work together effectively and do not duplicate resources. (Tr. I 37).

The RDA is being mandated by the DEP to abandon its Caledonia Heights lagoon. (Tr. I 38; Tr. II 30). The RDA is going to transfer its existing collection system and customers to the Utility. (Tr. I 38). The RDA will retain the lagoon and attempt to remediate it. (Tr. I 38).

There was no written agreement at the time of the first hearing between the RDA and the Utility concerning the transfer. (Tr. I 38). The Utility indicated that it would reduce its transfer agreement with the RDA to writing and submit it to the Commission almost immediately after the first hearing. (Tr. I 58, 59). The agreement was filed with the Commission on December 1, 2005. (See filing).

The RDA is hoping to get grant money to help remediate the lagoon and to remediate it over a long period of time. (Tr. I 40). Ms. Combs-Snider indicated that she believed the DEP would allow the RDA to remediate the lagoon in phases. (Tr. I 42). The RDA is not expecting the Industrial Park customers to pay for the remediation of the lagoon. (Tr. I 40). Those customers are independent of the lagoon and are served by a package treatment plant. (Tr. I 40). The lagoon remediation is expected to cost \$565,000. (Tr. I 40, 41).

The RDA receives funding from the State and the Hardy County Commission and generates some money through rentals. (Tr. I 41, 42). The DEP expressed to the RDA that trying to modernized the lagoon was simply not a possible alternative. (Tr. I 43). Ms. Combs-Snider believes that the RDA is out of environmental compliance even in dry weather. (Tr. I

43). The Utility has obtained financing over 40 years at 4.125% interest. (Tr. I 45, 46).

The RDA has experienced permit violations on its package treatment plant which serves the Industrial Park. (Tr. I 47, 48). Those violations were also a part of the pending Circuit Court action, but Ms. Combs-Snyder believed that they were now all resolved. (Tr. I 48). RDA has already paid \$3,000 in environmental fines. (Tr. I 53).

Caledonia Heights is about a mile to a mile and a half from Moorefield. (Tr. I 54). The Utility and RDA have never requested that Moorefield consider taking over the Caledonia Heights customers. (Tr. I 56).

There is a townhouse development called Yellowbud that is being served as one customer of the RDA through the Industrial Park. (Tr. I 54). The townhouses are not individually billed and RDA considers the whole arrangement to be a temporary situation. (Tr. I 54). The Utility is working on projects to provide sewer service in the Cold Spring and Baker areas. (Tr. I 55).

The RDA's current tariff rate is \$5.85 a month for a minimum bill of 3,000 gallons. (Tr. I 61). For a 4,500 customer, the monthly bill is \$7.80. (Tr. I 61). Staff described these rates as "very low." (Tr. I 61). Staff believed that they were about the fifth lowest sewer rates in the State. (Tr. I 62). Once the new rates are put into place, the Utility will have about the third highest sewer rates in the State. (Tr. I 63, 64). The 4,500 gallon rate would be approximately \$55.35. (Tr. I 64). Moorefield's current rates are \$30.65 for a 4,500 gallon bill. (Tr. I 66). The Staff's original recommendation for a 4,500 gallon rate was slightly lower because it was based on 2004 numbers. (Tr. I 66). The \$55.38 rate is based on 2005 numbers. (Tr. I 67). The 2005 O&M expenses were increased by \$5,000. (Tr. I 67). The Utility filed the necessary permits associated with the project. (Tr. I 70, 71).

Staff expressed concern about the past operations of the RDA and the Utility. (Tr. I 71). Staff indicated that they were not very responsive and have not shown "responsibility" in operating their facilities. (Tr. I 71).

Moorefield has no pending infrastructure application for any project. (Tr. I 74). Staff is concerned that the high rates resulting in this project will make it difficult for the Utility to pursue future projects. (Tr. I 74).

The Engineering Report dated July, 2005, noted that the Caledonia Heights existing sewer collection system suffers from I&I during rainfall events. (Tr. I 75). RDA should have been attempting to get rain gutters off the system for years. (Tr. I 75). RDA should have been replacing cracked mains and damaged pipes for years. (Tr. I 75, 76). With existing rates of \$7.80 per 4,500 gallon customer, RDA probably did not have a lot of extra revenue to do repairs. (Tr. I 76).

Staff is very concerned that the Utility aggressively work to reduce I&I because of the impact on rates and the possibility of excessive flows

being sent to Moorefield for treatment. (Tr. II 16, 17). Moorefield already operates relatively close to its treatment capacity and has expressed concerns over excessive I&I on the Caledonia Heights system. (Tr. II 17). Moorefield has indicated to Staff that it will require a master meter. (Tr. II 17). Staff believes that a master meter makes sense in order to discourage I&I. (Tr. II 17). Staff is not aware of a single utility in the State which has a master meter for a resale customer but does not use it for billing purposes. (Tr. II 22).

Several of the Caledonia Heights customers have admitted to Staff that they have downspouts connected to the sanitary sewer system. (Tr. II 18). Such connections increase the cost to everyone since the relatively clean rain water gets mixed with sewage and then requires expensive treatment. (Tr. II 19). Staff wants to make sure that the connections get removed. (Tr. II 31).

Staff recommends that the Utility be required to make periodic reports to the Commission about its efforts to reduce I&I. Such reports are routinely required by the Commission in cases where a utility experiences I&I problems such as those occurring in Caledonia Heights. (Tr. II 20).

DEP has indicated to Staff that the RDA has had continuous violations of environmental laws in the past and that it failed to correctly operate the system in the past. (Tr. I 78). The DEP information is consistent with the Circuit Court Order against the RDA. (Tr. I 78). Staff was skeptical, given the same management of the RDA and Utility, that the Utility would operate any differently. (Tr. I 78).

Ms. Roth testified that the RDA's annual report for 2005 increased O&M expenses by about \$5,000 because of a "one-time non-reoccurring item of budget operations that was transferred from the Caledonia Heights accounts into the general operating RDA accounts." (Tr. I 84). The RDA typically transferred monthly amounts, approximately \$400 for payroll and benefits. (Tr. I 84). In May of 2005, it transferred a large amount of money from the account because the RDA and the Utility were moving into new offices. (Tr. I 85).

Michael D. Griffith, a consulting CPA, developed an analysis that indicated that Moorefield's rates would have to be increased 10.2% in order to served the Caledonia customers as its own. (Tr. I 86, 87, 91, 92). Mr. Griffith's analysis assumed that Moorefield would have to acquire the lagoon and remediate it. (Tr. I 94).

The system is currently operating at a deficit of \$8,875. (Staff Ex. 3). Staff recommends a 125% rate increase to be approved upon the issuance of the Order to bring the system out of deficit operations (Id.). The 125% rate increase results in a minimum bill of \$13.17 based on 3,000 gallons and an average bill of \$17.57 for 4,500. (Id.). Staff recommends an additional 385% proforma rate increase effective upon the completion of the project. (Id.). The final rates would consist of a minimum bill of \$41.55 per month based on 3,000 gallons, and an average residential bill for 4,500 gallons of \$55.40 per month. (Id.). After completion of the project, the Utility is proposed to have an operating revenue of \$54,043 and operating expenses of \$31,420. (Id.). The post-

project recommended rates provide approximately a \$949 surplus and a debt service coverage of 122.21%. (Id.).

Moorefield does not want to incur additional debt or raise its rates in order to serve the subdivision. (Id.). Moorefield is concerned about the I&I that it might receive from the Caledonia Heights subdivision. (Id.). Moorefield is simply not willing to take over the Caledonia Heights subdivision, in part, because of concerns over remediating lagoon and, in part, over concerns over the poor condition of the collection lines and their existing I&I problem. (Staff Ex. 3; Tr. II 50). Moorefield insists on using a master meter for the project. (Staff Ex. 3). Using a master meter will encourage the Utility to address I&I problems, since all I&I will have to be paid for by the Utility. (Id.). Moorefield plans to charge the Utility a bulk rate based on the meter flows. (Id.).

Staff concluded that the project was both convenient and necessary. (Id.). The project is viewed as being necessary due to the necessity of eliminating the environmental problems of the existing lagoon. (Id.). The Staff concluded the project was convenient because Moorefield providing service to the customers directly is not a viable option at this point. (Id.). Staff is hopeful that, once a regional treatment plant is built, Caledonia Heights customers might experience a reduction in rates. (Id.).

Staff recommends that a written contract be developed between the Utility and Moorefield, including the detailed location for the tie-in, the estimated flow rate that will be generated by the Utility, the master meter location and the bulk rate from Moorefield. (Id.). Staff recommended that the Utility provide quarterly reports regarding I&I. (Id.). Staff recommends that the Utility and/or RDA submit a list of all customers who have downspouts which enter into the treatment system which were discovered during the smoke testing, and actions taken to correct those problems. (Id.).

Staff recommended that the Utility be required to undergo a rate review within two years of the final order of the case. (Id.). The history of the system being run at a deficit is one of the factors making Staff believe it is essential for the Commission to revisit rates for this project. (Tr. II 36). The rate review would also allow for adjustments if there is a new subdivision hooked onto the system. (Tr. II 37, 38). It would also allow for the adjustment of rates in the event that the amount of I&I is higher or lower than expected. (Tr. II 37).

Neither the Utility nor the RDA objected to the modification of the transfer agreement to transfer the customers immediately, as opposed to the transfer occurring after the lagoon is abandoned. (Tr. II 43, 44).

Mr. Ecker believes that Moorefield should serve the subdivision directly. (Tr. II 58). He believes that the RDA is partly at fault for the downspouts being connected to the sewer since it did not enforce the prohibition. (Tr. II 59). He believes that the Utility should have obtained grants to help with the project. (Tr. II 59). Mr. Ecker admitted that his footer drains are connected to the sanitary sewer. (Tr. II 60). He admitted that his property deed prohibited such

connections. (Tr. II 61; Utility Ex. 11). He intends to correct the problem. (Tr. II 60).

Mr. Inskeep owns the property on which the lagoon is located. (Tr. II 64). Since 1985, the lagoon has spilled sewage into the surrounding fields. (Tr. II 64). Mr. Inskeep's complaints to the RDA were not heeded. (Tr. II 65). Mr. Inskeep wants the mess cleaned up and the lagoon removed from his property. (Tr. II 65). Mr. Inskeep believes that the Environmental Protection Agency will require that the lagoon be remediated. (Tr. II 66).

DISCUSSION

The current situation regarding sewer service to the Caledonia Heights subdivision is untenable. The lagoon is consistently violating environmental laws. The RDA is under a consent order to correct its environmental violations. There is no dispute regarding a need for a solution to the long term problems with the sewer service provided in the subdivision.

Mr. Ecker prefers that Moorefield serve the customers in Caledonia Heights. He believes, probably correctly, that rates for individual customers in the subdivision would be lower if service could be directly provided by Moorefield. The problem is that the subdivision is not within the municipal boundaries of Moorefield and Moorefield is not interested in directly serving the customers. Moorefield is concerned about the poor condition of the collection system and what it anticipates to be a very high rate of I&I. Moorefield is also leery of becoming liable to remediate the existing lagoon.

The Utility stands ready to serve the subdivision, and the RDA stands ready to transfer the collection system and the customers to the Utility. The RDA is even willing to separate the liability for remediating the lagoon from the customers by retaining the lagoon and all its liabilities.

Given Moorefield's understandable reluctance to directly serve the customers of the subdivision, and the fact that the Utility has a project developed to correct the critical environmental problems of the existing system, the only available provider of service is the Utility.

Mr. Ecker argues in his brief that the Utility should pay for 50% of the cost of the project with grant money to be found in the future, and that the rates be developed with only a loan of \$177,500. Unfortunately, we are stuck with the financing we have and not the financing that we want. The Utility can only proceed with the project if it can pay for the project. There are no existing grants available to pay for half the project. Every sewer customer in the State wants as much grant money as possible in any project which will provide them sewer service. But grant money is not a magical thing that just appears because it is requested. Mr. Ecker did not show that the Utility failed to utilize available grant

money or that the Utility acted in any way improper relating the financing package it developed.

The customers in Caledonia Heights will see their rates increased by several hundred percent as a result of the project. Such a large increase is difficult. However, part of the reason for the extreme percentage increase is that the existing rates are artificially low. The current monthly minimum under the RDA's tariff is \$5.85 a month. For a 4,500 gallon customer the existing tariff rate is \$7.80 a month. The RDA is running the system with a cash flow deficit even with virtually no O&M expenditures. The rates have been artificially low since the inception of the system. When one starts with very low rates, the percentage increase sounds very high.²

The Staff-recommended post-project rates will be relatively high. It recommends a 4,500 gallon bill of \$55.40. Much angst is raised that this will place the average bill for Caledonia Heights at the high end of sewer charges when compared to other utilities in the State. The cold reality is that new projects end up with high rates. The cost of new construction of any kind, and its related financing, drives up rates. Sewer utilities in the State with low rates are old systems which were constructed years ago and have largely been paid off. Almost without exception, utilities with high rates have relatively new projects. The matter is made worse in this case because of the small customer base.

Mr. Ecker's request for rates to be developed that will only pay for half the cost of the project must be rejected. The rates recommended by Staff for both the immediate increase and the post-project rates are reasonable, just, based primarily on the cost of providing service and should be approved.

Mr. Ecker also argues that the RDA should be made to bear the cost of excess water entering into the sanitary sewer system from illegal drains connected to the sewer system by homeowners in the subdivision for a period of twelve months. He argues that the RDA should be made to bear such costs because it failed to prevent the homeowners from making such illegal connections.

The deeds for the properties in the subdivision specifically prohibited landowners from connecting drains to the sanitary sewer system. Despite such a prohibition, it apparently became a common practice. Even Mr. Ecker admitted that his home had foundation drains tied into the sanitary sewer. It is likely true that the RDA should have been more aggressive in preventing such abuses. It is possible that if the RDA had been more aggressive in preventing I&I both with improper connections of drains and with a more aggressive maintenance of its collection pipes, the existing lagoon would have had a longer life.

²The existing artificially low rates likely significantly reduced the opportunity for the project to obtain grant money. Most agencies with grant money will only consider projects which have existing rates which are much higher than the RDA rates.

But the homeowners are the ones which violated the covenants in their deeds and directly violated Commission regulations. Mr. Ecker's argument that someone should have made him do what he should have---and was legally obligated to do---borders on the silly. The homeowners should not be relieved of their obligation to keep their downspouts and foundation drains out of the sanitary sewer just because the RDA was not an effective enforcer of the rules.

The Utility objects to the recommendation by Staff that a master meter be used by Moorefield to bill the Utility for treatment. The Utility argues that the issue should be left to negotiation between Moorefield and the Utility. It also argues that it based its O&M estimates on an assumed 25% of I&I on its system. It also argues that Moorefield's bulk rate already presupposes an I&I rate in it.

A review of Moorefield's current tariff does not reveal any resale or bulk rate. The Commission is not aware that Moorefield has any existing sewer resale customers. It is unclear on what basis the Utility argues that an existing bulk rate has made provision for I&I since such a rate does not appear to exist.

The Utility's own engineer concluded that the existing collection system had "excessive I&I." (Utility Ex. 3 at 7). A study of manhole #2 showed that, on a dry day, May 3, 2003, it had a flow of 12.64 gallons per minute, but, on a rainy day, May 10, 2003, it had a flow of 82.97 gallons per minute. (Id at 4.). The report further indicated that "this excessive I&I could be the result of cracked and broken sanitary sewer lines, gutters and drains tied directly into sanitary sewer lines, or sanitary sewer manholes in low lying areas that collect water." (Id at 7.). Much of the reason Moorefield refuses to directly serve these customers is an understandable fear of the I&I problem of the existing collection system.

To expect Moorefield to bill the Utility based on water meter readings is unreasonable. Such a billing system would relieve the Utility of any financial incentive to cure its own I&I problem. It would also place the financial burden of treating excessive I&I on Moorefield. To even pretend that this issue is up for negotiation between the two utilities is not appropriate. Any contract submitted to the Commission must include billing based on a master meter.

The Utility initially raised other objections to the Staff recommendations but did not address the objections in its briefing after the second hearing. It is assumed that it decided, after the hearing, that those objections should not be pursued.³

Staff recommended an immediate rate increase for the system in order to cure an operating cash flow deficit. The Utility properly pointed out, at hearing, that, under the terms of the transfer agreement, the Utility would not have the customers until after the project was

³The Utility argued that the Commission would lack jurisdiction to require quarterly reports on I&I, and to require a rate filing in two years. Neither objection had merit.

complete. The Utility and RDA did indicate that they had no objection to the transfer agreement being modified so the Utility immediately acquired the customers in order to implement the Staff rate recommendations.

The transfer agreement should be modified to transfer the customers to the Utility almost immediately. The continued operations of the system make it necessary for sufficient rates to be charged to get the system out of deficit. The agreement will also need to be modified to require the Utility to pay RDA for any necessary O&M on the lagoon until the project is complete.

The Utility and RDA, which is also a public utility serving both water and sewer customers, entered into a joint operating agreement in 1988. Ms. Combs-Snider indicated that the agreement was never submitted to the Commission for its approval. It is possible that Ms. Combs-Snider is mistaken and the agreement was submitted to the Commission. However, Ms. Combs-Snider has been the executive director of both organizations since 1984 and is most likely correct that the agreement was never submitted to the Commission. Utilities have long been obligated by Chapter 24 of the W.Va. Code to submit inter-utility operating agreements to the Commission for its review and approval. The Utility should be required to submit the contract to the Commission for its approval, unless it can demonstrate that such approval has already been granted.

FINDINGS OF FACT

1. On July 8, 2005, the Utility filed an application for a certificate of convenience and necessity to construct improvements to the wastewater system that services the Caledonia Heights subdivision near Moorefield. (See filing.).

2. The Commission received numerous protests regarding the application. (See file generally).

3. On December 1, 2005, the Utility filed a copy of an asset transfer agreement between the Utility and the Hardy County Rural Development Authority (RDA), which is the entity currently providing sewer service in Caledonia Heights. (See filing).

4. On December 2, 2005, Staff recommended approval of the certificate. Staff also recommended that the Commission grant a rate increase of 125% to become effective immediately, with an additional rate increase of 385% over the intermediate rates to become effective after the project is completed. (See filing).

5. The RDA is currently violating its NPDES permit. There is frequently too much flow for the lagoon to handle. The DEP has filed administrative orders regarding the RDA's violation of its NPDES and the matter is pending in Circuit Court. The RDA is being mandated by the DEP to abandon its Caledonia Heights lagoon. The RDA is out of environmental compliance even in dry weather. (Tr. I 10, 11, 17, 38, 43; Tr. II 30; Utility Ex. 8).

6. The Utility's engineer performed smoke testing, video monitoring, flow metering and other tests of the system. Mr. Riley considered replacing the collection system to reduce I&I and upgrading the lagoon. Mr. Riley estimated the cost of line replacement at approximately \$801,000. He estimated the cost of transferring the sewer flows to Moorefield for treatment at \$355,000. (Tr. I 12, 13).

7. RDA and Mr. Riley concluded that upgrading the lagoon would not be a very good long-term solution given the constantly changing environmental regulations. The lagoon technology is very old technology. Mr. Riley determined that transferring the sewage to Moorefield would be more cost effective. (Tr. I 13, 14).

8. The existing collection system has "excessive I&I." A study of manhole #2 showed that, on a dry day, May 3, 2003, it had a flow of 12.64 gallons per minute, but, on a rainy day, May 10, 2003, it had a flow of 82.97 gallons per minute. The report further indicated that "this excessive I&I could be the result of cracked and broken sanitary sewer lines, gutters and drains tied directly into sanitary sewer lines, or sanitary sewer manholes in low lying areas that collect water." (Utility Ex. 3 at 4, 7).

9. The proposed project includes a new lift station and new four-inch force main to deliver the effluent to Moorefield for treatment. (Tr. I 16).

10. The project cost does not include abandoning the lagoon. The lagoon will eventually need to be remediated. The RDA will retain ownership of the lagoon and its associated liabilities. The RDA will retain the lagoon and attempt to remediate it. The RDA is hoping to get grant money to help remediate the lagoon and to remediate it over a long period of time. Ms. Combs-Snider indicated that she believed the DEP would allow the RDA to remediate the lagoon in phases. The RDA is not expecting the Industrial Park customers to pay for the remediation of the lagoon. Those customers are independent of the lagoon and are served by a package treatment plant. The lagoon remediation is expected to cost \$565,000. (Tr. I 16, 17, 38, 40, 41, 42).

11. The Utility will be the entity building the project and serving the customers in the future. (Tr. I 17).

12. Mr. Riley explained that the engineering fees were a high percentage of the cost because of the video taping, smoke testing and flow monitoring already accomplished. He also explained that the small size of the project results in a larger percentage being engineering fees. (Tr. I 19, 20).

13. The O&M expenses projected by the project are based upon actual water sold plus an allowable I&I. The project does not include a master meter estimated in the construction cost estimate. The engineer allowed 20% to 25% for I&I. (Tr. I 23, 24).

14. Mallie Combs-Snider has been the executive director of both the RDA and the Utility since 1984. (Tr. I 33).

15. The RDA is a county agency, created in 1965, responsible for economic development and job growth. Its first project was Caledonia Heights. It developed the subdivision including the water and sewer infrastructure. The RDA has been providing Caledonia Heights utility service since 1968. The RDA receives funding from the State and the Hardy County Commission and generates some money through rentals. The RDA also has 10 to 15 sewer customers in the Industrial Park. After the project, the only sewer customers of the RDA will be in the Industrial Park. The RDA would still be providing water service for the Caledonia Heights customers. (Tr. I 33, 34, 35, 41, 42).

16. The Utility's water rate for minimum usage of 3,000 or less is \$21.00 a month, and the RDA's rate for the same usage is \$8.31 a month. (Tr. I.35).

17. In 1988, the Utility and the RDA entered into a joint operating agreement. The agreement allows the Utility and the RDA to share common staff and other operational needs. Ms. Combs-Snyder does not believe that the joint operating agreement has ever been submitted to the Commission for its approval. The RDA and the Utility have independent boards, but they work together and try not to duplicate resources. (Tr. I 37, 56, 57; Utility Ex. 7).

18. The RDA is going to transfer its existing collection system and customers to the Utility. (Tr. I 38; Tr. II 30; See Utility filing of December 1, 2005).

19. The Utility has obtained financing for the project over 40 years at 4.125% interest. (Tr. I 45, 46).

20. The RDA has experienced permit violations on its package treatment plant which serves the Industrial Park. The RDA has already paid \$3,000 in environmental fines. (Tr. I 47, 48, 53).

21. The RDA's current tariff rate is \$5.85 for a monthly minimum bill of 3,000 gallons. For a 4,500 customer, the monthly bill is \$7.80. Staff described these rates as "very low." Staff believed that they were about the fifth lowest sewer rates in the State. (Tr. I 61, 62).

22. Once the new rates are put into place, the Utility will have about the third highest sewer rates in the State. The 4,500 gallon rate would be \$55.40. (Tr. I 63, 64).

23. The Utility filed the necessary permits associated with the project. (Tr. I 70, 71).

24. Staff expressed concern about the past operations of the RDA and the Utility. Staff indicated that the RDA was not very responsive and has not shown "responsibility" in operating its facilities. The DEP has indicated to Staff that the RDA has had continuous violations of environmental laws in the past and that it failed to correctly operate the system in the past. The DEP information is consistent with the Circuit Court Order against the RDA. Staff was skeptical, given the same management of the RDA and Utility, that the Utility would operate any differently. (Tr. I 71, 78).

25. Moorefield has no pending infrastructure application for any project. (Tr. I 74).

26. The RDA should have been attempting to get rain gutters off the system for years. The RDA should have been replacing cracked mains and damaged pipes for years. With existing rates of \$7.80 per 4,500 gallon customer, the RDA probably did not have a lot of extra revenue to do repairs. (Tr. I 75, 76).

27. Staff is very concerned that the Utility aggressively work to reduce I&I because of the impact on rates and the possibility of excessive flows being sent to Moorefield for treatment. Moorefield already operates relatively close to its treatment capacity and has expressed concerns over the excessive I&I on the Caledonia Heights system. (Tr. II 16, 17).

28. Moorefield insists on using a master meter for the project. Using a master meter will encourage the Utility to address I&I problems. Moorefield plans to install a master meter and charge the Utility a bulk rate. Staff believes that a master meter makes sense in order to discourage I&I. Staff is not aware of a single utility in the State which has a master meter for a resale customer, but does not use it for billing purposes. (Tr. II 17, 22; Staff Ex. 3).

29. Several of the Caledonia Heights customers have admitted to Staff that they have downspouts connected to the sanitary sewer system. Such connections increase the cost to everyone since the relatively clean rain water gets mixed with sewage and then requires expensive treatment. (Tr. II 18, 19).

30. Staff recommends that the Utility be required to make periodic reports to the Commission about its efforts to reduce I&I. Such reports are routinely required by the Commission in cases where a utility experiences I&I problems such as those occurring in Caledonia Heights. (Tr. II 20).

31. The system is currently operating at a deficit of \$8,875. Staff recommends a 125% rate increase to be approved upon the issuance of the Order to bring the system out of deficit operations. The 125% rate increase results in a minimum bill of \$13.17 based on 3,000 gallons and an average bill of \$17.57 for 4,500. (Staff Ex. 3).

32. Staff recommends an additional 385% proforma rate increase, effective upon the completion of the project. The final rates would consist of a minimum bill of \$41.55 per month based on 3,000 gallons and an average residential bill for 4,500 gallons of \$55.40 per month. After completion of the project, the Utility is proposed to have an operating revenue of \$54,043 and operating expenses of \$31,420. The post-project recommended rates provide approximately a \$949 surplus and a debt service coverage of 122.21%. (Id.).

33. Moorefield does not want to incur additional debt or raise its rates in order to serve the subdivision. Moorefield is concerned about the I&I that it might receive from the Caledonia Heights subdivision. Moorefield is simply not willing to take over the Caledonia Heights

subdivision, in part, because of concerns over remediating lagoon and, in part, because of concerns over the poor condition of the collection lines and their existing I&I problem. (Tr. II 50; Staff Ex. 3).

34. Staff concluded that the project was both convenient and necessary. (Staff Ex. 3).

35. Staff recommends that a written contract be developed between the Utility and Moorefield, including the detailed location for the tie-in, the estimated flow rate that will be generated by the Utility, the master meter location, and the bulk rate from Moorefield. (Id.).

35. Staff recommended that the Utility provide quarterly reports regarding I&I. Staff recommends that the Utility and/or RDA submit a list of all customers who have downspouts which enter into the treatment system, which were discovered during the smoke testing, and the actions taken to correct those problems. (Id.).

36. Staff recommended that the Utility be required to undergo a rate review within two years of the final order of the case. (Id.).

37. Neither the Utility nor the RDA objected to the modification of the transfer agreement to transfer the customers immediately, as opposed to the transfer occurring after the lagoon is abandoned. (Tr. II 43, 44).

38. Many, if not all, of the property deeds for the subdivision prohibit property owners from tying in roof and foundation drains into the sanitary sewer. (Tr. II 61; Utility Ex. 11).

CONCLUSIONS OF LAW

1. Public convenience and necessity require the project.
2. The Utility's proposed financing is reasonable and should be approved.
3. The certificate should be approved contingent upon the approval by the Commission of a contract between the Utility and Moorefield for the provision of treatment services which includes the detailed location of the tie in, the estimated flow rate, the master meter location and the bulk rate.
4. The transfer agreement entered into between the Utility and the RDA, filed December 1, 2005, should be modified and approved.
5. The Utility should be required to seek Commission approval should the project's scope or proposed financing change for any reason.
6. The Utility should be required to submit quarterly reports on I&I at least until its next rate review. The Utility should also be required to submit to the Commission a list of all customers known to

have improper drains connected to the sanitary sewer and an explanation of the actions taken by the Utility to remedy the problem.

7. The Utility should be required to submit its joint operating agreement with the RDA to the Commission for its review and approval.

8. The Staff-recommended rates, both pre-project and post-project, are reasonable, just, based primarily on the cost of providing service and should be approved for use by the Utility.

9. The Utility should be required to seek Commission review of its sewer rates within two years of the approval of the project.

ORDER

IT IS, THEREFORE, ORDERED that the application filed by the Hardy County Public Service District on July 8, 2005, for a certificate of convenience and necessity to construct improvements to the wastewater system that services the Caledonia Heights subdivision near Moorefield be, and hereby is, granted. This approval is contingent upon the receipt of any outstanding permits and the approval by the Commission of an agreed contract between the Utility and the City of Moorefield for the provision of treatment services which includes the detailed location of the tie in, the estimated flow rate by the Utility, the master meter location, and the bulk rate.

IT IS FURTHER ORDERED that the transfer agreement entered into by the Hardy County Public Service District and the Hardy County Rural Development Authority submitted to the Commission for its approval on December 1, 2005, be, and hereby is, modified so that the first sentence of the numbered Paragraph 2 of the Agreement reads as follows: "Ten days after the Commission Order approving the project becomes final, the RDA will transfer ownership of all of its wastewater customers and associated revenues and its collection system in Caledonia Heights subdivision, as is, where is, to the PSD." The agreement is also modified so that an additional sentence is added to numbered Paragraph 2 to immediately follow the first sentence which reads: "RDA shall charge the PSD its costs for any necessary operation and maintenance on the lagoon until the subdivision's waste is transported to Moorefield." The transfer agreement, as modified, is hereby approved.

IT IS FURTHER ORDERED that the proposed financing, consisting of a 40-year loan from USDA-Rural Development of \$355,000 at 4.125% annual interest be, and hereby is, approved.

IT IS FURTHER ORDERED that the Hardy County Public Service District petition the Commission to reopen the proceeding should the cost, scope or financing of the project change for any reason.

IT IS FURTHER ORDERED that the Hardy County Public Service District submit a certified copy of the bid tabulations for all contract bids as soon as they are available. The Utility shall also submit a copy of a

certificate of substantial completion issued for the project, as soon as it is available.

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 the Hardy County Public Service District request a rate review for its sewer rates from the Commission within two years of the final order in this proceeding.

IT IS FURTHER ORDERED that the Hardy County Public Service District provide quarterly reports to the Commission regarding the inflow and infiltration problem and actions taken to reduce the amount of I&I. The reports shall be filed until the conclusion of the Utility's next rate proceeding.

IT IS FURTHER ORDERED that the Hardy County Public Service District submit a list to the Commission of all customers with downspouts or foundation drains connected to the sanitary sewer that were discovered during the smoke testing, and include actions taken to correct these problems within six months of the date that this order becomes final.

IT IS FURTHER ORDERED that the rates attached as Appendix A be, and hereby are, approved for use by the Hardy County Public Service District for the provision of sewer service rendered on and after the date that this becomes a final order of the Commission. The Utility shall file with the Commission a proper tariff setting forth the approved rates, and five copies, within thirty days of the date of that this order becomes final.

IT IS FURTHER ORDERED that the rates attached as Appendix B be, and hereby are, approved for use by the Hardy County Public Service District for the provision of sewer service rendered on and after the date of substantial completion of the project. The Utility shall file with the Commission a proper tariff setting forth the post-project rates, and five copies, within thirty days of the date of substantial completion.

IT IS FURTHER ORDERED that the Hardy County Public Service District submit to the Commission for its review and approval the operating agreement which it has with the Hardy County Rural Development Agency within thirty days of the date this order becomes final. Alternatively, the Utility may provide the Commission a copy of a Commission Order approving the agreement if such an Order exists.

IT IS FURTHER ORDERED that the Executive Secretary remove the case from the Commission's active docket.

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:lc
051004ac.wpd

HARDY COUNTY PUBLIC SERVICE DISTRICT
Case No. 05-1004-PSD-CN

APPROVED RATES UPON THE ORDER BECOMING FINAL

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial, industrial and sale for resale sewer service.

RATES (customers with metered water supply)

First	3,000 gallons used per month	\$4.39 per 1,000 gallons
Next	2,000 gallons used per month	2.93 per 1,000 gallons
Next	5,000 gallons used per month	2.25 per 1,000 gallons
All Over	10,100 gallons used per month	1.80 per 1,000 gallons

MINIMUM CHARGE

No minimum bill will be rendered for less than \$13.75 per month, which is the equivalent of 3,000 gallons of usage.

DELAYED PAYMENT PENALTY

The above scheduled is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE

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

A tap fee of \$150.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap the system.

LEAK ADJUSTMENT

\$2.22 per 1,000 gallons of water is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS
CONNECTED TO THE DISTRICT'S SANITARY SEWER SYSTEM

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

- S - The surcharge in dollars.
- A - The area under roof and/or the area of any other water collection surface connected to the sanitary system, in square feet.
- R - The measured monthly rainfall, in inches.
- .0006233 - A conversion factor to change inches of rain x square feet of a surface to thousands of gallons of water.
- C - The District's approved rate per thousand gallons of metered water usage.

The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission.

HARDY COUNTY PUBLIC SERVICE DISTRICT
Case No. 05-1004-PSD-CN

APPROVED RATES UPON COMPLETION OF PROJECT

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial, industrial and sale for resale sewer service.

RATES (customers with metered water supply)

First	3,000 gallons used per month	\$13.85 per 1,000 gallons
Next	2,000 gallons used per month	9.23 per 1,000 gallons
Next	5,000 gallons used per month	7.10 per 1,000 gallons
All Over	10,100 gallons used per month	5.68 per 1,000 gallons

MINIMUM CHARGE

No minimum bill will be rendered for less than \$41.54 per month, which is the equivalent of 3,000 gallons of usage.

DELAYED PAYMENT PENALTY

The above scheduled is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE

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

A tap fee of \$150.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap the system.

LEAK ADJUSTMENT

\$2.22 per 1,000 gallons of water is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS
CONNECTED TO THE DISTRICT'S SANITARY SEWER SYSTEM

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

- S - The surcharge in dollars.
- A - The area under roof and/or the area of any other water collection surface connected to the sanitary system, in square feet.
- R - The measured monthly rainfall, in inches.
- .0006233 - A conversion factor to change inches of rain x square feet of a surface to thousands of gallons of water.
- C - The District's approved rate per thousand gallons of metered water usage.

The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission.

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 10th day of April, 2006.

CASE NO. 05-1004-PSD-CN (Reopened)

HARDY COUNTY PUBLIC SERVICE DISTRICT,
a public utility, Moorefield, Hardy County.

Petition to reopen for the entry of a Corrective Order to revise the tariffs contained in the February 19, 2006, Commission Order.

COMMISSION ORDER

On July 8, 2005, the Hardy County Public Service District (District) filed an application for a certificate of convenience and necessity to construct improvements to the wastewater system that services the Caledonia Heights subdivision near Moorefield. The project is estimated to cost \$355,000, and will be financed with a loan from the USDA-Rural Development. The customers are currently being served by the Hardy County Rural Development Authority (RDA), an agency created by the Hardy County Commission. The RDA plans to transfer the customers and its collection system to the District.

On January 30, 2006, the Administrative Law Judge assigned to this case issued a Recommended Decision (final February 19, 2006), which, among other things, granted the certificate. The Recommended Decision also included rates to be used by the District (1) upon the date the Recommended Decision became final; and (2) upon completion of the project.

On March 7, 2006, the District filed a letter requesting the Commission reopen this proceeding for the purpose of correcting typographical errors in the tariffs.

On March 27, 2006, Commission Staff (Staff) filed its Initial and Final Joint Staff Memorandum. Staff supported the District's request to reopen this proceeding and recommended a corrective order be issued to correct the following errors in the tariffs attached to the January 30, 2006, Recommended Decision:

1. Appendix A, APPROVED RATES UPON THE ORDER BECOMING FINAL, UNDER Rates, the All Over amount of gallons used per

month, incorrectly reads 10,100 gallons. The correct amount for this is 10,000 gallons.

2. The same tariff, under Minimum Charge, it incorrectly states that "No minimum bill will be rendered for less than \$13.75 per month. The correct amount for this is \$13.17.
3. Appendix B. APPROVED RATES UPON COMPLETION OF PROJECT, UNDER Rates, the All Over amount of gallons used per month, incorrectly reads 10,100 gallons. The correct amount for this is 10,000 gallons.

UPON CONSIDERATION the Commission shall reopen this proceeding solely for the purpose of correcting typographical errors in the rates attached to the January 30, 2006, Recommended Decision.

ORDER

IT IS THEREFORE ORDERED that this matter is reopened.

IT IS FURTHER ORDERED that Hardy County Public Service District shall use the rates attached to this order as Appendix A, for all service rendered after February 19, 2006.

IT IS FURTHER ORDERED that within thirty (30) days of the date of this Order, Hardy County Public Service District shall file with the Commission a revised tariff setting forth the new rates and charges.

IT IS FURTHER ORDERED that Hardy County Public Service District shall use the rates attached to this order as Appendix B, for all service rendered after substantial completion of the project.

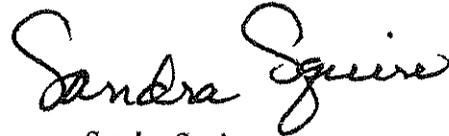
IT IS FURTHER ORDERED that within thirty (30) days of the date of substantial completion of the project, Hardy County Public Service District shall file with the Commission an original and five (5) copies of a tariff setting forth the post-project rates.

IT IS FURTHER ORDERED that in all other aspects, the January 30, 2006, Recommended Decision remains in full force and effect.

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

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

A True Copy, Teste:



Sandra Squire
Executive Secretary

LHG/s
051004ca.wpd

HARDY COUNTY PUBLIC SERVICE DISTRICT
Case No. 05-1004-PSD-CN

APPROVED RATES UPON THE ORDER BECOMING FINAL

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial, industrial and sale for resale sewer service.

RATES (customers with metered water supply)

First	3,000 gallons used per month	\$4.39 per 1,000 gallons
Next	2,000 gallons used per month	2.93 per 1,000 gallons
Next	5,000 gallons used per month	2.25 per 1,000 gallons
All Over	10,000 gallons used per month	1.80 per 1,000 gallons

MINIMUM CHARGE

No minimum bill will be rendered for less than \$13.17 per month, which is the equivalent of 3,000 gallons of usage.

DELAYED PAYMENT PENALTY

The above scheduled is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

TAP FEE

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

A tap fee of \$150.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap the system.

LEAK ADJUSTMENT

\$2.22 per 1,000 gallons of water is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS CONNECTED TO THE DISTRICT'S SANITARY SEWER SYSTEM

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

- S - The surcharge in dollars.
- A - The area under roof and/or the area of any other water collection surface connected to the sanitary system, in square feet.
- R - The measured monthly rainfall, in inches.
- .0006233 - A conversion factor to change inches of rain x square feet of a surface to thousands of gallons of water.
- C - The District's approved rate per thousand gallons of metered water usage.

The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted *within thirty (30) days from receipt of such notice* to divert the water from the sanitary sewer system.

The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission.

HARDY COUNTY PUBLIC SERVICE DISTRICT
Case No. 05-1004-PSD-CN

APPROVED RATES UPON COMPLETION OF PROJECT

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

Available for general domestic, commercial, industrial and sale for resale sewer service.

RATES (customers with metered water supply)

First	3,000 gallons used per month	\$13.85 per 1,000 gallons
Next	2,000 gallons used per month	9.23 per 1,000 gallons
Next	5,000 gallons used per month	7.10 per 1,000 gallons
All Over	10,000 gallons used per month	5.68 per 1,000 gallons

MINIMUM CHARGE

No minimum bill will be rendered for less than \$41.54 per month, which is the equivalent of 3,000 gallons of usage.

DELAYED PAYMENT PENALTY

The above scheduled is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: November 20, 2008

CASE NO. 05-1004-PSD-CN

HARDY COUNTY PUBLIC SERVICE DISTRICT,
a public utility, Moorefield, Hardy County,
Application for a certificate of convenience
and necessity to construct a sewage lift
station and force main to transfer all
wastewater flows from the Caledonia Heights
subdivision to the Town of Moorefield for
treatment and disposal.

FINAL

12/10/2008

RECOMMENDED DECISION

On February 19, 2006, the Hardy County Public Service District (PSD) was granted a certificate of public convenience and necessity to undertake a project estimated to cost \$355,000 to improve the wastewater system at the Caledonia Heights subdivision near Moorefield.

On June 13, 2008, the PSD petitioned the Commission to reopen the proceeding. The reopening was necessary because the cost of the project had increased to \$608,000. Financing was changed so that a greater debt obligation was obtained at a significantly lower interest rate so that the user rates would not need to increase above those previously approved. The additional project funds, in part, allowed the PSD to work on the significant inflow and infiltration (I&I) problem on the system. The interconnection point with the Town of Moorefield (Town) was also moved so that the sewage flow could reach the Town through gravity lines, eliminating the proposed pump station. The PSD requested that the Commission also approve a contract with the Town regarding treatment and approve an alternate main extension agreement with the Hardy County Board of Education (Board). The PSD also requested that the Commission determine whether the Town or the PSD would be the proper utility to serve a new intermediate school being built by the Board.

On September 8, 2008, the Commission reopened the matter and consolidated it with Case No. 08-1028-PSD-C.¹ The Commission referred the matter, requiring a decision on or before January 6, 2009.

¹Case No. 08-1028-PSD-C is a formal complaint filed by the Town against the PSD alleging that the PSD was improperly violating the Town's service territory in the PSD's attempt to serve the new intermediate school.

A hearing was held in the matter on November 6, 2008. Thomas R. Michael, Esquire, appeared on behalf of the PSD. Jack H. Walters, Esquire, appeared on behalf of the Town. Lucas J. See, Esquire, appeared on behalf of the Board. Philip Inskeep appeared on his own behalf. Lisa L. Wansley, Esquire, appeared on behalf of Staff.

At the conclusion of the hearing, the PSD moved to bifurcate the two proceedings. The PSD argued that all issues related to the territorial dispute could be resolved in the complaint case and that a prompt order could be issued in the certificate case in order to allow the PSD to proceed with correcting the significant environmental problems associated with the continued use of the lagoon for its treatment. All parties concurred in the PSD's motion to bifurcate the proceeding in an effort to expedite the issuance of the certificate. All parties reported that there were no issues remaining between the parties on the issuance of the certificate.

By Procedural Order issued November 10, 2008, the proceedings were bifurcated. The Order indicated that issues related to which party would serve the intermediate school, the alternate main extension agreement between the Board and the PSD, the approval of the agreement between the Town and the PSD and issues related to a possible transmission charge would be decided in 08-1208-PSD-C.

The PSD's modified project involving the Caledonia Heights subdivision should be approved. Certain ordering paragraphs from previous orders approving the project should be restated in order to remind the PSD of its obligations.

FINDINGS OF FACT

1. On February 19, 2006, the PSD was granted a certificate of public convenience and necessity to undertake a project estimated to cost \$355,000 to improve the wastewater system at the Caledonia Heights subdivision near Moorefield. (See orders entered January 30, 2006 and April 10, 2006).

2. The Commission approved rates for the PSD to be effective upon substantial completion of the project. (See Appendix B of Commission Order entered April 10, 2006).

3. The Commission found that the public convenience and necessity required the project, given significant environmental problems with the system currently used to treat the sewage for the Caledonia Heights subdivision. (See Commission Order entered January 30, 2006).

4. On June 16, 2008, the PSD petitioned to open the certificate proceeding indicating that its financing had changed, the cost of the project had increased, and the interconnection point with the Town had been modified so that a pump station could be eliminated. (See petition).

5. The project costs have increased from \$355,000 to \$608,000, but the necessary rates to support the project have not increased because of the change in financing and the decrease in the operation and maintenance expenses. (See filing of September 24, 2008, by Michael Griffith, CPA; Staff Memorandum filed August 12, 2008).

6. Staff concluded that the new project costs and the related engineering fees were reasonable. (Id.).

7. The new financing for the project is an Infrastructure Jobs Development Council loan in the amount of \$608,000 for forty years at zero percent interest, which results in a lower debt service than the PSD's previously loan which was offered by the Rural Utility Service. The Rural Utility Service has already deobligated the funds. (Id.).

8. The change in the location of the interconnection with the Town resulted in the elimination of a pump station which resulted in decreased O&M expenses. (Id.).

9. The PSD should have a cash flow surplus of \$4,707 and a debt service coverage of 145.19 percent under the rates already approved by the Commission. (See Staff filing of August 12, 2008).

10. Staff recommended approval of the proposed financing consisting of the \$608,000 Infrastructure and Jobs Development Council loan at zero percent interest for forty years. Id.

CONCLUSION OF LAW

The PSD's petition requesting approval of the modifications to the scope and financing of the project should be granted.

ORDER

IT IS, THEREFORE, ORDERED that the project previously approved by the Commission through orders issued January 30, 2006, and April 10, 2006, be, and hereby is, modified to increase the cost of the project to \$608,000 and to approve the increase in the scope of the project as described by the Hardy County Public Service District in its filing of June 16, 2008. Nothing in this order should be construed as approving the PSD providing service to the Hardy County Board of Education. All issues related to the provision of service to the Board will be resolved in Case No. 08-1028-PSD-C.

IT IS FURTHER ORDERED that the proposed financing of the project, consisting of the \$608,000 loan from the Infrastructure and Jobs Council for forty years at zero percent interest, be, and hereby is, approved.

IT IS FURTHER ORDERED that the rates previously approved by the Commission for use upon substantial completion of this project, which are stated in Appendix B to the Commission Order dated April 10, 2006, remain the approved rates for this project upon substantial completion.

IT IS FURTHER ORDERED that all issues related to which utility will properly serve the intermediate school, the proper resolution of the alternate main extension agreement between the Board and the PSD, the approval of the agreement between the Town and the PSD and issues related to a possible transmission charge will be decided in Case No. 08-1208-PSD-C.

IT IS FURTHER ORDERED that, if there are any changes in the plans, financing or scope of the project, the PSD must seek Commission approval of those changes. If any changes in the project cost result in modification of rates, the PSD must seek Commission approval of such cost changes. If the project-related rates remain unchanged, but the project cost changes, the PSD must file an affidavit executed by a certified public accountant verifying that the modifications to the project cost will not impact the necessary rates and charges.

IT IS FURTHER ORDERED that the Hardy County Public Service District submit a certified copy of the bid tabulations for all contract bids as soon as they are available. The PSD shall also submit a copy of the certificate of substantial completion issued for the project, as soon as it is available.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways right-of-ways, the PSD shall comply with all rules and regulations of the Division of Highways regarding the use of those right-of-ways.

IT IS FURTHER ORDERED that the Hardy County Public Service District request a rate review for its sewer rates from the Commission within two years of the date of the substantial completion of this project.

IT IS FURTHER ORDERED that the Hardy County Public Service District provide quarterly reports to the Commission regarding the inflow and infiltration problem and actions taken to reduce the amount of inflow and infiltration. The reports shall be filed until the conclusion of the PSD's next rate proceeding.

IT IS FURTHER ORDERED that the Hardy County Public Service District submit a list to the Commission of all customers with down spouts or foundation drains connected to the sanitary sewer that were discovered during the smoke testing and include actions taken to correct these problems within six months of the date that this Order becomes final.

IT IS FURTHER ORDERED that the Executive Secretary remove this matter from the open docket.

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:cdk
051004af.wpd

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 9th day of February, 2009.

CASE NO. 05-1004-PSD-CN (Reopened)

HARDY COUNTY PUBLIC SERVICE DISTRICT, a public utility,
Moorefield, Hardy County.

Application for a certificate of convenience and necessity to construct a sewage lift station and force main to transfer all wastewater from the Caledonia Heights Subdivision to the Town of Moorefield for treatment and disposal.

CASE NO. 08-1028-PSD-C

TOWN OF MOOREFIELD
Moorefield, Hardy County,

Complainant,

v.

HARDY COUNTY PUBLIC SERVICE DISTRICT, a public utility,
and HARDY COUNTY BOARD OF EDUCATION, both located
in Moorefield, Hardy County.

Defendants.

COMMISSION ORDER

The Commission grants its prior consent for two utilities to enter into an agreement for sewage treatment services.

BACKGROUND

Hardy Co. PSD Certificate Project, Case No. 05-1004-PSD-CN

On February 19, 2006, Hardy County Public Service District was granted a certificate of public convenience and necessity to undertake a \$355,000 project to improve the wastewater system at the Caledonia Heights subdivision near Moorefield and transport the wastewater to the Town of Moorefield for treatment. The Commission also approved project financing and increased customer rates. Rec. Dec. Pp. 16-17 Jan. 30, 2006, final Feb. 19, 2006. The decision was contingent upon, among other things, Commission approval of an agreed treatment services contract between Hardy County and Moorefield that included the detailed location of the tie in between the Caledonia Heights and Moorefield systems, the estimated flow rate by Hardy County, the master meter location, and the bulk rate. *Id.* p. 16.

On June 13, 2008, Hardy County petitioned to reopen the certificate case because the project cost had increased to \$608,000. Hardy County proposed to borrow more money, but at a significantly lower interest rate so that rates would not need to be increased. The additional funding also would allow Hardy County to work on the inflow and infiltration problems on the Caledonia Heights system. Furthermore, the interconnection point was moved so that the sewage flow could reach Moorefield through gravity lines, eliminating the proposed pump station. Hardy County also asked the Commission to approve a treatment contract with Moorefield, approve an alternate main extension agreement with the Hardy County Board of Education, and determine whether Moorefield or Hardy County should serve an intermediate school under construction. Petition to reopen pp. 1-4.

Moorefield formal complaint, Case No. 08-1028-PSD-C

On June 18, 2008, Moorefield filed a formal complaint alleging that Hardy County was improperly attempting to serve the new intermediate school in Moorefield's service territory.

Consolidated proceedings

On September 8, 2008, the Commission reopened the certificate case, consolidated it with the formal complaint case, and referred the consolidated matters to the Division of Administrative Law Judges for further processing. Comm'n Referral Order p. 4.

At the conclusion of a hearing conducted on November 6, 2008, Hardy County moved to bifurcate the cases, arguing that all issues related to the territorial dispute could be resolved in the complaint case and that a prompt order should be issued in the certificate proceeding so that Hardy County could work to correct the problems on the Caledonia

Heights system. All parties concurred, and the ALJ granted the motion to bifurcate. Procedural Order p. 2 (Nov. 10, 2008).

Hardy Co. PSD Certificate Project, Case No. 05-1004-PSD-CN

On December 10, 2008, the Commission approved the proposed changes in the certificate project, as well as the revised financing. Rec. Dec. pp. 3-4, Hardy Co. PSD, Case No. 05-1004-PSD-CN (Nov. 19, 2008, final Dec. 10, 2008). The Commission left several issues to be resolved in the formal complaint case: the treatment services agreement, the alternate main extension agreement, and which utility would serve the new school. Id.

Moorefield formal complaint, Case No. 08-1028-PSD-C

On December 23, 2008, the ALJ noted that all parties agreed that Moorefield should serve the intermediate school, although for varying reasons, and concluded that the proposed alternate main extension agreement between Hardy County and the school board was moot. Rec. Dec. pp. 3 & 6 (Dec. 23, 2008). The ALJ also concluded that Hardy County should charge Moorefield \$0.29 per thousand gallons¹ when Hardy County transports wastewater from Moorefield's customers to Moorefield's system for treatment. Id.

The ALJ also concluded that the treatment contract between Moorefield and Hardy County should be approved, with amendments to reflect that Moorefield would serve the intermediate school and that the transportation rate would be \$0.29 per thousand gallons. Rec. Dec. pp. 4 & 6.

On January 5, 2009, Moorefield filed exceptions, advising that after the hearing Moorefield was asked to annex the Elizabeth Station subdivision and provide sewer service to it. Exceptions p. 1. Under the proposed treatment agreement, Hardy County will serve the initial phase of Elizabeth Station, and, thus, Moorefield asked the treatment agreement to be amended to reflect that Moorefield will serve the initial phase of Elizabeth Station. Tr. Utility Ex. 13 (Nov. 6, 2008).

On January 6, 2009, Hardy County filed exceptions, requesting a transportation rate comprised of the \$1.90 Staff recommendation, plus \$0.14 for allocated debt expense. Exceptions p. 1. Hardy County also asked the Commission to conclude decision in this case

¹ Three different rates had been proposed: \$0.14 per thousand gallons by Hardy County; \$1,000 a year, which equates to about \$0.29 per thousand gallons by Moorefield; and \$1.90 per thousand gallons by Commission Staff. Rec. Dec. p. 3. The ALJ noted that the initial charge likely would be in effect for a short time because Hardy County was required to file a rate case no later than two years after the certificate project begins providing service. Id.

does not preclude future customers in this overlapping territory from choosing Hardy County as their sewer service provider. Id. p. 2.

On January 15, 2009, Staff responded to the exceptions, arguing that the Commission should adopt Staff's \$1.90 transportation rate, but not the additional \$0.14 because operation and maintenance expenses were not listed in Hardy County's 2007 or 2008 annual reports. Response p. 3, as corrected Jan. 21, 2009. Staff stated that Hardy County and Moorefield have overlapping authority to provide sewer service in the area and when there is overlapping authority, the Commission allows the customer to select the utility provider. Id., citing Comm'n Order pp. 5-6, Harrison R.E. Assoc. v. Public Serv. Comm'n, Case No. 04-1937-E-C (June 9, 2008).

Although the school board signed an alternate main extension agreement for Hardy County to serve the intermediate school, the school board recently applied to Moorefield for service instead, and the school board may choose its sewer provider under Commission policy. Response pp. 3-4. Staff recommended adding a statement to the Recommended Decision that the Commission policy is to allow a customer to choose its utility provider in an area with overlapping authority.

Staff did not support Moorefield's request to amend the treatment contract to state that Moorefield will serve the Elizabeth Station subdivision. Response p. 4. Staff noted that Hardy County has 77 customers in the Caledonia Heights subdivision, and recently a potential customer, the school board, requested service from Moorefield. The developer of Elizabeth Station is not a party to this case and has not yet filed anything reflecting its choice of utility provider. Id. Moreover, the annexation of Elizabeth Station by Moorefield has not been completed. Staff advised that the expectation that Hardy County would serve Elizabeth Station was an important part of the treatment agreement between Moorefield and Hardy County. Id. Staff advised that if service to Elizabeth Station is to be considered at all, this case must be remanded. Id. pp. 4-5.

On January 16, 2009, Hardy County responded, arguing that Moorefield raised a new issue when Moorefield stated that it "no longer agrees that Elizabeth Station will be a customer of the District." Response p. 1. Hardy County asserted that after Elizabeth Station is annexed, Moorefield will entirely surround Caledonia Heights and that Hardy County's new sewer main apparently will allow the subdivision to take advantage of Moorefield's lower rates. Id. Hardy County argued that without Caledonia Heights residents paying for the new line, Moorefield would not be able to serve Elizabeth Station, the intermediate school or others in the vicinity. Response pp. 1-2. Hardy County asserted that Moorefield required Hardy County to work on the inflow and infiltration problems at Caledonia Heights, as part of the treatment agreement. Hardy County agreed to do so with the understanding that it would have the revenues from Elizabeth Station and the intermediate school to do so. Id. p. 2. Hardy County asserted that it had been in negotiations with the developer of Elizabeth Station for 18 months. Id. Hardy County asked the Commission to defer ruling on which utility could serve Elizabeth Station. Id. p. 3.

Motion for expedited interim relief

On January 22, 2009, Hardy County filed a motion for expedited relief, asserting that the terms for Moorefield to treat flows from Hardy County customers at Caledonia Heights are entirely separate from the transportation fee to be charged by Hardy County for transporting flows from Moorefield's customers and which utility will serve Elizabeth Station. Motion p. 1. Hardy County has opened bids for its certificate project and obtained the necessary easements, but Hardy County needs an approved treatment agreement in place to be able to close on the project funding and commence construction. Id. To expedite the Caledonia Heights certificate project, Hardy County and Moorefield have negotiated a revised treatment agreement. See attachment to Motion. Hardy County was authorized to represent that Moorefield did not oppose its motion. Motion p. 2.

Pursuant to the revised contract, Moorefield agrees to accept flows from Caledonia Heights and the interconnection point will be on the east side of U.S. Rt. 220 in front of Markwood Ridge. Hardy County agrees to pay Moorefield each month \$3.84 per thousand gallons to transport and treat the Hardy County flows, based on metered flows at the interconnection point. Revised contract p. 2. Moorefield shall install and operate, at its sole expense, the master flow meter. Id. Hardy County will be responsible for operation and maintenance from Caledonia Heights to the master flow meter, and Moorefield will be responsible for operation and maintenance on the other side of the meter. Id. p. 3. The master flow meter will be located on the existing Caledonia Heights main line, between the Caledonia Heights subdivision and the new main line. A second flow meter, also to be installed and maintained at Moorefield's sole expense, will measure the flows from the middle and intermediate schools. The flows from the schools (because they are Moorefield customers) will be deducted from the Caledonia Heights master flow meter when Hardy County is billed.

Hardy County will charge Moorefield a fee to transport the flows from the schools, but the transportation rate will be determined by the Public Service Commission in Case Number 08-1028-PSD-C. The revised treatment contract will later be supplemented by an addendum that states the transportation fee. Revised contract p. 3. Hardy County and Moorefield also agreed that the contract would later be supplemented to reflect which utility will serve Elizabeth Station. Id.

In the indemnity provisions of the revised treatment agreement, Hardy County acknowledges that Moorefield cannot hold Hardy County harmless "if the pump station is overwhelmed by excessive inflow and infiltration." Revised contract p. 5.

On February 5, 2009, Commission Staff recommended that the Commission grant the motion for expedited interim relief, so long as Hardy County and Moorefield file a revised agreement "containing the entire agreement including the information about Elizabeth Station, the treatment rate and the three additional items recommended by Staff" after the Commission rules on the pending exceptions. Staff Response p. 2.

Because the original contract stated that Moorefield would not have the capacity to accept the Elizabeth Station flows at full build out until a new regional treatment plant was built, Technical Staff was concerned that the contract did not state the maximum treatment capacity that Moorefield can accept. Interim Internal Memorandum p. 2, attached to Staff's Response to Motion for Expedited Relief. Because all parties agreed that inflow and infiltration on the Caledonia Heights system was a major concern, Staff suggested that the revised contract contain a time line for remedial work. Id. Under the revised contract, Hardy County agrees to be responsible if harmful materials enter Moorefield's system, as determined by the meter flow meter records, but Staff asserted that the master flow meter records would not be reliable to determine what materials enter Moorefield's system.

Technical Staff proposed, therefore, these changes to the revised contract:

- 1) Revise Paragraph 1 to state
 - a) the maximum treatment capacity that Moorefield can accept from Caledonia Heights, and
 - b) if Hardy County requests additional treatment capacity, the contract must be renegotiated and the availability of additional capacity must be verified.
- 2) Revise Paragraph 8 to include specific time lines for Hardy County to correct the inflow and infiltration problems at Caledonia Heights.
- 3) Revise Paragraph 10 to add appropriate methods to detect harmful materials.

Interim Internal Memorandum pp. 3-4. Staff provided language for each of these proposals.

On February 5, 2009, Hardy County advised that it accepted Staff's recommendation. Response p. 1. By separate letter on February 5, 2009, Hardy County advised that it was authorized to represent that Moorefield also accepted Staff's recommendation. Ltr. p. 1.

DISCUSSION

The Commission appreciates the need to proceed with urgency on the Caledonia Heights certificate project and, upon reflection, understands that consolidation of the formal complaint and the certificate case has complicated, instead of streamlined, case processing. The provisions in the proposed contract that do not relate to treatment of Caledonia Heights flows are extraneous and need not be resolved at this time.

To close on the certificate financing, Hardy County needs an approved treatment agreement. To that end, the Commission will require Hardy County and Moorefield to file a *further* revised contract within 10 days of the date of this Order. So long as the further revised contract contains only terms relating to the treatment service to be provided for Caledonia Heights and is consistent with this Order, no further action by the Commission will be necessary.

Although Staff suggested that a revised treatment contract be filed after the Commission rules on exceptions in the formal complaint case, the Commission prefers to have all of the final contract terms known when Hardy County closes on its financing.

W. Va. Code § 24-2-12(a) requires a public utility to receive permission from the Commission prior to contracting with another utility. Under the statute, the Commission is authorized to consent to a proposed transaction, without approving of its terms and conditions, if the transaction is reasonable and does not adversely affect the public and neither party is given an undue advantage. The Commission further is authorized to determine if a hearing is necessary.

The Commission agrees with Staff that the contract should be revised to add the maximum treatment capacity that Moorefield can accept from Caledonia Heights and that any request for additional treatment capacity would require further negotiations that would be contingent upon the verification of the availability of additional capacity. Furthermore, master meter flow readings will not reveal the presence of harmful materials and the contract should provide for the appropriate detection of harmful materials. None of these changes will work any harm upon either Moorefield or Hardy County, and we do not expect any objection to such provisions.

Staff also suggested that the further revised contract contain a time line for Hardy County to address the inflow and infiltration problems at the Caledonia Heights system. Although it is reasonable to prepare such a plan, the Commission does not agree that the plan should be part of the agreement between Hardy County and Moorefield. Moorefield does not have any responsibility to oversee Hardy County's operations; such responsibility lies, instead, with the Commission. The Commission shall require Hardy County to file its remediation time line with the Commission and update it at least once a year. The Commission does not wish to have to revisit the treatment contract to review Hardy County's reports and, if necessary, to revise the remediation plan. Within 90 days of the date of this Order, Hardy County shall file its remediation time line in the certificate proceeding, Case Number 05-1004-PSD-CN.

Staff's recommendations contain proposed language for the contract revisions. Because Hardy County and Moorefield have advised that they accept Staff's recommendation, the further revised contract should track the language that Staff proposed for the first and third items.

Finally, Hardy County's petition to reopen recited that the interconnection point was moved so that the sewage flow could reach Moorefield through gravity lines, eliminating the proposed pump station. In the indemnity provisions of the proposed contract, however, Hardy County represents that Moorefield cannot hold Hardy County harmless "if the pump station is overwhelmed by excessive inflow and infiltration." Revised contract p. 5. If a pump station will be involved in Moorefield's treatment of the Caledonia Heights flows, the further revised contract should also be clarified in this respect.

With these revisions, the Commission concludes that the proposed treatment contract is reasonable and does not adversely affect the public and neither party is given an undue advantage. Therefore, the Commission should grant its prior consent for Moorefield and Hardy County to enter into such a treatment contract.

Because there is agreement among the parties, the Commission concludes that a hearing is not necessary.

FINDINGS OF FACT

1. On February 19, 2006, Hardy County was granted a certificate for a project to improve the wastewater system at Caledonia Heights and transport the wastewater to Moorefield for treatment. The Commission also approved project financing and increased customer rates. Rec. Dec. pp. 16-17, Hardy Co. PSD, Case No. 05-1004-PSD-CN (Jan. 30, 2006, final Feb. 19, 2006). The decision was contingent upon, among other things, Commission approval of an agreed treatment services contract between Hardy County and Moorefield. Id. p. 16.

2. On June 13, 2008, Hardy County petitioned to reopen the certificate case because the project cost had increased. Petition to reopen pp. 1-4. Hardy County also proposed to work on the inflow and infiltration problems on the Caledonia Heights system and move the interconnection point so that the sewage flow could reach Moorefield through gravity lines, eliminating the proposed pump station. Furthermore, Hardy County asked the Commission to approve a treatment contract with Moorefield, approve an alternate main extension agreement with the Hardy County Board of Education, and determine whether Moorefield or Hardy County should serve an intermediate school under construction. Id.

3. On January 22, 2009, Hardy County filed a motion for expedited relief, asserting that the terms for Moorefield to treat flows from Hardy County customers at Caledonia Heights can be decided separately from the other issues. Motion p. 1, Moorefield v. Hardy Co. PSD, Case No. 08-1028-PSD-C. Hardy County asserted that it needs an approved treatment agreement in place to be able to close on funding and commence construction of the certificate project. Id. Hardy County and Moorefield negotiated a revised treatment agreement to enable the Commission to proceed expeditiously. See attachment to Motion.

4. On February 5, 2009, Staff recommended that the Commission grant the motion for expedited interim relief, so long as Hardy County and Moorefield file a revised treatment agreement after the Commission rules on the pending exceptions. Staff's Response p. 2. Staff provided specific suggestions to amend the revised treatment contract.

5 On February 5, 2009, Hardy County and Moorefield advised that they accepted Staff's recommendations. Ltr. p. 1.

CONCLUSIONS OF LAW

1. The provisions in the revised contract that do not relate to treatment of Caledonia Heights flows are extraneous and need not be resolved at this time.

2. The final terms of the treatment contract concerning the Caledonia Heights flows should be known when Hardy County closes on its financing.

3. The proposed contract should be further revised to add the maximum treatment capacity that Moorefield can accept from Caledonia Heights and that any request for additional treatment capacity would require further negotiations that would be contingent upon the verification of the availability of additional capacity and to provide for the appropriate detection of harmful materials.

4. The treatment contract between Hardy County and Moorefield should not contain a time line for Hardy County to address the inflow and infiltration problems at Caledonia Heights.

5. The further revised contract should track the language that Staff proposed, except as to the inclusion of a remediation time line.

6. If a pump station will be involved in Moorefield's treatment of the Caledonia Heights flows, the further revised contract should also be clarified in this respect.

7. With the revisions discussed in this Order, the Commission concludes that the proposed treatment contract is reasonable and does not adversely affect the public and neither party is given an undue advantage.

8. Because there is agreement among the parties, the Commission concludes that a hearing is not necessary.

ORDER

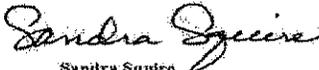
IT IS THEREFORE ORDERED that, pursuant to W. Va. Code § 24-2-12(a), and without approving the underlying terms and conditions, the Commission grants its prior consent for Hardy County and Moorefield to enter into a further revised contract, as is explained above. Hardy County and Moorefield shall file a copy of the further revised contract within 10 days of the date of this Order.

IT IS FURTHER ORDERED that within 90 days of the date of this Order, Hardy County shall file a plan to remediate the inflow and infiltration problems at Caledonia Heights. The plan shall be filed as a closed entry, only in the certificate proceeding, Case Number 05-1004-PSD-CN, and shall be updated at least once a year.

IT IS FURTHER ORDERED that the certificate proceeding, Case Number 05-1004-PSD-CN, is removed from the Commission's docket of active case.

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

A True Copy, Text:


Sandra Squire
Executive Secretary

CLW/sek
081028c.wpd

20774

Clay R

West Virginia Infrastructure & Jobs Development Council

Public Members:
Kenneth Lowe, Jr.
Shepherdstown
Dwight Calhoun
Petersburg
Dave McComas
Prichard
Ron Justice
Morgantown

RECEIVED

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

MAR 11 2008

Jefferson E. Brady, PE
Executive Director

THRASHER ENGINEERING, INC.
March 11, 2008

Jefferson.Brady@verizon.net

Matthew Gapp, Chairman
Hardy County Public Service District
P.O. Box 900
Moorefield, West Virginia 26302

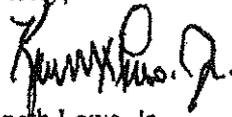
Re: Hardy County Public Service District
Sewer Project 2008S-1011

Dear Mr. Gapp:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Hardy County Public Service District's (the "District") preliminary application to connect the Caledonia Heights sewer system to the Town of Moorefield for treatment and disposal (the "Project"). At its March 5, 2008 meeting the Council determined that the District should receive a binding commitment for an Infrastructure Fund Loan of \$608,000 to finance the project.

In order to receive the proposed binding commitment the District must adhere to a certain project schedule. Please contact Jeff Brady by April 30, 2008 to establish the necessary schedule and finalize the proposed binding commitment.

Sincerely,



Kenneth Lowe, Jr.

KL/jb

Enclosure

cc: Mike Johnson, P.E., DEP (w/o enclosure)
Steve Collins, RUS (w/o enclosure)
Clay Riley, P.E., Thrasher Engineering, Inc.

2008 JUN 16 AM 9 12
RECEIVED
W. VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

West Virginia Infrastructure & Jobs Development Council

2008 JUN 16 AM 9 12

Public Members:
Kenneth Lowe, Jr.
Shepherdstown
Dwight Calhoun
Petersburg
Dave McComas
Prichard
Ron Justice
Morgantown

W.VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Jefferson E. Brady, PE
Executive Director

Jefferson.Brady@verizon.net

June 9, 2008

Matthew Gapp, Chairman
Hardy County Public Service District
P.O. Box 900
Moorefield, WV 26302

Re: Hardy County PSD
Sewer Project 2008S-1011

Dear Mr. Gapp:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") provides this binding offer of an Infrastructure Fund loan of approximately \$608,000 (the "Loan") to the Hardy County Public Service District (the "District") for above referenced wastewater project (the "Project"). The Loan will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final Loan amount will be established after the District has received acceptable bids for the Project. The Infrastructure Council will set aside a portion of the Infrastructure Fund to make the Loan upon the District's compliance with the program requirements.

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

- a. File Certificate Case with the Public Service Commission no later than January 20, 2008;
- b. Issue the Preliminary Right-of-Way opinion no later than July 15, 2008;
- b. Advertise for bids no later than July 31, 2008.
(The District must receive authority from the Infrastructure Council before bidding the project. A pre-bid checklist is attached.)

The Infrastructure Council reserves the right to withdraw this Loan commitment if any of the above schedule dates are not met. The Infrastructure Council may, when justifiable circumstances occur, offer to modify the schedule. Any decision to modify the schedule is at the sole discretion of the Infrastructure Council.

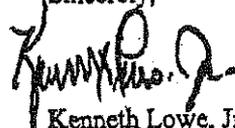
If the District becomes aware that it will not meet one or more of the above schedule dates, the District should immediately notify the Infrastructure Council of this fact and the circumstances which have caused or will cause the District to be unable to meet the schedule. In addition, please immediately notify the Infrastructure Council if any of the other dates on the attached schedule have or will not be met.

The Infrastructure Council will enter into a Loan agreement with the District following receipt of the completed Schedule B, a final, nonappealable order from the Public Service Commission authorizing construction of the Project, evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; and any other documents requested by the Infrastructure Council.

Matthew Gapp
June 9, 2008
Page 2

No statements or representations made before or after the issuance of this contingent commitment by any person or member of the Infrastructure Council shall be construed as approval to alter or amend this commitment, as all such amendments or alterations shall only be made in writing after approval of the Infrastructure Council.

If the District has any questions regarding this commitment, please contact Jeff Brady at the above-referenced telephone number.

Sincerely,

Kenneth Lowe, Jr.

Attachments

cc: Clay Riley, P.E., Thrasher Engineering

NOTE: This letter is sent in triplicate. Please acknowledge receipt and immediately return two copies to the Infrastructure Council.

Hardy County Public Service District

By: _____

Its: _____

Date: _____

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

Hardy County PSD
Wastewater Project 2008S-1011
June 9, 2008

SCHEDULE A

- A. Approximate Amount: \$608,000 Loan
- B. Loan: \$608,000
1. Maturity Date: 40 years
 2. Interest Rate: 0%
 3. Loan Advancement Date(s) Monthly, upon receipt of proper requisition
 4. Debt Service Commencement: The first quarter following completion of construction, which date must be identified prior to closing.
 5. Special Conditions: None

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

- C. Other Funding:
None
- D. Total Project Cost: \$608,000

West Virginia Infrastructure & Jobs Development Council

Public Members:
Kenneth Lowe, Jr.
Shepherdstown
Dwight Calhoun
Petersburg
Dave McComas
Prichard
Ron Justice
Morgantown

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Jefferson E. Brady, PE
Executive Director

Jefferson.Brady@verizon.net

August 11, 2008

The Honorable James Lobb
Mayor, City of Kingwood
313 Tunnelton Street
Kingwood, West Virginia 26537

Re: City of Kingwood
Sewer Project 2007D-998 (Sewer Design)

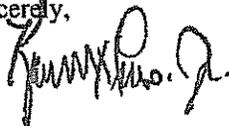
Dear Mayor Lobb:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Kingwood's (the "City") revised preliminary design application regarding its proposed project to design the sewer extension to serve 70 new customers, plant improvements, replacement of existing pressure sewer system with a gravity system and improvements to lift stations (the "Project").

Upon consideration of design application, the Infrastructure Council recommends that the City pursue up to a \$724,650 design loan from the Water Development Authority to fund this project. Please contact the Water Development Authority office at (304) 558-3612 for specific information on the steps the City needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from this agency.**

If you have any questions regarding this matter, please contact Jeff Brady at (304) 558-4607.

Sincerely,



Kenneth Lowe, Jr.

Enclosure

cc: Mike Johnson, P.E., DEP (w/o enclosure) (via e-mail)
Randy Lengyel, WDA (w/o enclosure) (via e-mail)
Region VI Planning & Development Council
Matthew Fluharty, Thrasher Engineering, Inc.

PROJECT SCHEDULE

Project: Hardy Co PSD
 County: Hardy
 Project No.: 2008S-1011
 Date: June 9, 2008

Funding:
 IJDC Loan \$608,000

Total Project: \$608,000

Project Milestone	Responsible Party	Start	Completion
Engineering Agreement	PSD / Thrasher	Complete	Complete
Prepare & Submit Plans & Specs to DEP	Thrasher	Complete	Complete
Plans & Specs Review & Approval	BPH/DEP	Complete	Complete
Prepare & Submit All Permit Applications	Thrasher	Complete	Complete
Prepare Rule 42	Thrasher	1/1/2008	5/1/2008
Prepare & Implement Rate Ordinance	NA	NA	NA
File PSC Certificate Case	Attorney	5/1/2008	5/1/2008
Review and Approve PSC Certificate (180 or 270 days)	PSC	5/1/2008	11/1/2008
Rights-of-way, Easements & Land Acquisition	Attorney	1/1/2008	7/1/2008
Authority to Advertise for Bids	IJDC	7/31/2008	7/31/2008
Advertise for Bids	Thrasher	7/31/2008	8/31/2008
Bid Opening	Thrasher	8/31/2008	8/31/2008
Loan Closing	Attorney	12/1/2008	12/1/2008
Construction	Contractor	12/1/2008	9/1/2009

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On the 3rd day of March, 2009, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and the undersigned Chairman of Hardy County Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the 3rd day of March, 2009, the Authority received the Hardy County Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), issued in the principal amount of \$608,000, as a single, fully registered Bond, numbered AR-1 and dated March 3, 2009 (the "Bonds").

2. At the time of such receipt, the Bonds had been executed by the Chairman and the Secretary of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Bonds, of the sum of \$122,376, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer by the Authority and the Council as acquisition and construction of the Project progresses.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: *Glenn L. Roy*
Its: Authorized Representative

HARDY COUNTY
PUBLIC SERVICE DISTRICT

By: *Matthew H. App*
Its: Chairman

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

On this the 3rd day of March, 2009, there are delivered to you herewith:

(1) Bond No. AR-1, constituting the entire original issue of the Hardy County Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), in the principal amount of \$608,000, dated March 3, 2009 (the "Bonds"), executed by the Chairman and Secretary of Hardy County Public Service District (the "Issuer"), and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Resolution and a Supplemental Resolution, both duly adopted by the Issuer on February 25, 2009 (the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-described Bond issue, duly certified by the Secretary of the Issuer;

(3) Executed counterparts of the loan agreement dated March 3, 2009, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Loan Agreement"); and

(4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the account of the Issuer of the sum of \$122,376, representing a portion of the principal amount of the Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

HARDY COUNTY
PUBLIC SERVICE DISTRICT

By: Matthew B. Bopp
Its: Chairman

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HARDY COUNTY PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 2009 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1

\$608,000

KNOW ALL MEN BY THESE PRESENTS: That on this 3rd day of March, 2009, HARDY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Hardy County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of SIX HUNDRED EIGHT THOUSAND DOLLARS (\$608,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including March 1, 2049, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated March 3, 2009.

This Bond is issued: (i) to pay the costs of acquisition and construction of public sewerage facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on February 25, 2009, and a Supplemental Resolution duly adopted by the Issuer on February 25, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THERE ARE NO OUTSTANDING BONDS OR OBLIGATIONS OF THE ISSUER WHICH RANK ON A PARITY WITH THE BONDS OR ARE SECURED BY REVENUES OR ASSETS OF THE SYSTEM.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 A Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

All monies received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

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

[SEAL]

Matthew B. B. B.

Chairman

ATTEST

Connie E. Sherman

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 A Bond described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: March 3, 2009.

THE HUNTINGTON NATIONAL BANK,
as Registrar


Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$122,376	March 3, 2009	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ _____

EXHIBIT B

DEBT SERVICE SCHEDULE

BOND DEBT SERVICE

Hardy County PSD

0% Interest Rate

Dated Date 3/3/2009

Delivery

Date 3/3/2009

Period Ending	Principal	Interest	Debt Service
12/1/2009	3,849.		3,849.
3/1/2010	3,849.		3,849.
6/1/2010	3,849.		3,849.
9/1/2010	3,849.		3,849.
12/1/2010	3,849.		3,849.
3/1/2011	3,849.		3,849.
6/1/2011	3,849.		3,849.
9/1/2011	3,849.		3,849.
12/1/2011	3,849.		3,849.
3/1/2012	3,849.		3,849.
6/1/2012	3,849.		3,849.
9/1/2012	3,849.		3,849.
12/1/2012	3,849.		3,849.
3/1/2013	3,849.		3,849.
6/1/2013	3,849.		3,849.
9/1/2013	3,849.		3,849.
12/1/2013	3,848.		3,848.
3/1/2014	3,848.		3,848.
6/1/2014	3,848.		3,848.
9/1/2014	3,848.		3,848.
12/1/2014	3,848.		3,848.
3/1/2015	3,848.		3,848.
6/1/2015	3,848.		3,848.
9/1/2015	3,848.		3,848.
12/1/2015	3,848.		3,848.
3/1/2016	3,848.		3,848.
6/1/2016	3,848.		3,848.
9/1/2016	3,848.		3,848.
12/1/2016	3,848.		3,848.
3/1/2017	3,848.		3,848.
6/1/2017	3,848.		3,848.
9/1/2017	3,848.		3,848.
12/1/2017	3,848.		3,848.
3/1/2018	3,848.		3,848.
6/1/2018	3,848.		3,848.
9/1/2018	3,848.		3,848.
12/1/2018	3,848.		3,848.
3/1/2019	3,848.		3,848.
6/1/2019	3,848.		3,848.
9/1/2019	3,848.		3,848.
12/1/2019	3,848.		3,848.
3/1/2020	3,848.		3,848.
6/1/2020	3,848.		3,848.
9/1/2020	3,848.		3,848.
12/1/2020	3,848.		3,848.
3/1/2021	3,848.		3,848.

BOND DEBT SERVICE
 Hardy County PSD
 0% Interest Rate

Period Ending	Principal	Interest Debt Service
6/1/2021	3,848.	3,848.
9/1/2021	3,848.	3,848.
12/1/2021	3,848.	3,848.
3/1/2022	3,848.	3,848.
6/1/2022	3,848.	3,848.
9/1/2022	3,848.	3,848.
12/1/2022	3,848.	3,848.
3/1/2023	3,848.	3,848.
6/1/2023	3,848.	3,848.
9/1/2023	3,848.	3,848.
12/1/2023	3,848.	3,848.
3/1/2024	3,848.	3,848.
6/1/2024	3,848.	3,848.
9/1/2024	3,848.	3,848.
12/1/2024	3,848.	3,848.
3/1/2025	3,848.	3,848.
6/1/2025	3,848.	3,848.
9/1/2025	3,848.	3,848.
12/1/2025	3,848.	3,848.
3/1/2026	3,848.	3,848.
6/1/2026	3,848.	3,848.
9/1/2026	3,848.	3,848.
12/1/2026	3,848.	3,848.
3/1/2027	3,848.	3,848.
6/1/2027	3,848.	3,848.
9/1/2027	3,848.	3,848.
12/1/2027	3,848.	3,848.
3/1/2028	3,848.	3,848.
6/1/2028	3,848.	3,848.
9/1/2028	3,848.	3,848.
12/1/2028	3,848.	3,848.
3/1/2029	3,848.	3,848.
6/1/2029	3,848.	3,848.
9/1/2029	3,848.	3,848.
12/1/2029	3,848.	3,848.
3/1/2030	3,848.	3,848.
6/1/2030	3,848.	3,848.
9/1/2030	3,848.	3,848.
12/1/2030	3,848.	3,848.
3/1/2031	3,848.	3,848.
6/1/2031	3,848.	3,848.
9/1/2031	3,848.	3,848.
12/1/2031	3,848.	3,848.
3/1/2032	3,848.	3,848.
6/1/2032	3,848.	3,848.
9/1/2032	3,848.	3,848.
12/1/2032	3,848.	3,848.
3/1/2033	3,848.	3,848.
6/1/2033	3,848.	3,848.
9/1/2033	3,848.	3,848.

BOND DEBT SERVICE
Hardy County PSD
0% Interest Rate

Period Ending	Principal	Interest	Debt Service
12/1/2033	3,848.		3,848.
3/1/2034	3,848.		3,848.
6/1/2034	3,848.		3,848.
9/1/2034	3,848.		3,848.
12/1/2034	3,848.		3,848.
3/1/2035	3,848.		3,848.
6/1/2035	3,848.		3,848.
9/1/2035	3,848.		3,848.
12/1/2035	3,848.		3,848.
3/1/2036	3,848.		3,848.
6/1/2036	3,848.		3,848.
9/1/2036	3,848.		3,848.
12/1/2036	3,848.		3,848.
3/1/2037	3,848.		3,848.
6/1/2037	3,848.		3,848.
9/1/2037	3,848.		3,848.
12/1/2037	3,848.		3,848.
3/1/2038	3,848.		3,848.
6/1/2038	3,848.		3,848.
9/1/2038	3,848.		3,848.
12/1/2038	3,848.		3,848.
3/1/2039	3,848.		3,848.
6/1/2039	3,848.		3,848.
9/1/2039	3,848.		3,848.
12/1/2039	3,848.		3,848.
3/1/2040	3,848.		3,848.
6/1/2040	3,848.		3,848.
9/1/2040	3,848.		3,848.
12/1/2040	3,848.		3,848.
3/1/2041	3,848.		3,848.
6/1/2041	3,848.		3,848.
9/1/2041	3,848.		3,848.
12/1/2041	3,848.		3,848.
3/1/2042	3,848.		3,848.
6/1/2042	3,848.		3,848.
9/1/2042	3,848.		3,848.
12/1/2042	3,848.		3,848.
3/1/2043	3,848.		3,848.
6/1/2043	3,848.		3,848.
9/1/2043	3,848.		3,848.
12/1/2043	3,848.		3,848.
3/1/2044	3,848.		3,848.
6/1/2044	3,848.		3,848.
9/1/2044	3,848.		3,848.
12/1/2044	3,848.		3,848.
3/1/2045	3,848.		3,848.
6/1/2045	3,848.		3,848.
9/1/2045	3,848.		3,848.
12/1/2045	3,848.		3,848.
3/1/2046	3,848.		3,848.

BOND DEBT SERVICE
Hardy County PSD
0% Interest Rate

Period Ending	Principal	Interest	Debt Service
6/1/2046	3,848.		3,848.
9/1/2046	3,848.		3,848.
12/1/2046	3,848.		3,848.
3/1/2047	3,848.		3,848.
6/1/2047	3,848.		3,848.
9/1/2047	3,848.		3,848.
12/1/2047	3,848.		3,848.
3/1/2048	3,848.		3,848.
6/1/2048	3,848.		3,848.
9/1/2048	3,848.		3,848.
12/1/2048	3,848.		3,848.
3/1/2049	3,848.		3,848.
	608,000.		608,000.

(Form of)

ASSIGNMENT

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

Dated: _____, 20 ____.

In the presence of:

BOND DEBT SERVICE

Hardy County PSD

0% Interest Rate

Dated Date 3/3/2009

Delivery

Date 3/3/2009

<u>Period</u> <u>Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
12/1/2009	3,849.		3,849.
3/1/2010	3,849.		3,849.
6/1/2010	3,849.		3,849.
9/1/2010	3,849.		3,849.
12/1/2010	3,849.		3,849.
3/1/2011	3,849.		3,849.
6/1/2011	3,849.		3,849.
9/1/2011	3,849.		3,849.
12/1/2011	3,849.		3,849.
3/1/2012	3,849.		3,849.
6/1/2012	3,849.		3,849.
9/1/2012	3,849.		3,849.
12/1/2012	3,849.		3,849.
3/1/2013	3,849.		3,849.
6/1/2013	3,849.		3,849.
9/1/2013	3,849.		3,849.
12/1/2013	3,848.		3,848.
3/1/2014	3,848.		3,848.
6/1/2014	3,848.		3,848.
9/1/2014	3,848.		3,848.
12/1/2014	3,848.		3,848.
3/1/2015	3,848.		3,848.
6/1/2015	3,848.		3,848.
9/1/2015	3,848.		3,848.
12/1/2015	3,848.		3,848.
3/1/2016	3,848.		3,848.
6/1/2016	3,848.		3,848.
9/1/2016	3,848.		3,848.
12/1/2016	3,848.		3,848.
3/1/2017	3,848.		3,848.
6/1/2017	3,848.		3,848.
9/1/2017	3,848.		3,848.
12/1/2017	3,848.		3,848.
3/1/2018	3,848.		3,848.
6/1/2018	3,848.		3,848.
9/1/2018	3,848.		3,848.
12/1/2018	3,848.		3,848.
3/1/2019	3,848.		3,848.
6/1/2019	3,848.		3,848.
9/1/2019	3,848.		3,848.
12/1/2019	3,848.		3,848.
3/1/2020	3,848.		3,848.
6/1/2020	3,848.		3,848.
9/1/2020	3,848.		3,848.
12/1/2020	3,848.		3,848.
3/1/2021	3,848.		3,848.

BOND DEBT SERVICE
Hardy County PSD
0% Interest Rate

Period Ending	Principal	Interest	Debt Service
6/1/2021	3,848.		3,848.
9/1/2021	3,848.		3,848.
12/1/2021	3,848.		3,848.
3/1/2022	3,848.		3,848.
6/1/2022	3,848.		3,848.
9/1/2022	3,848.		3,848.
12/1/2022	3,848.		3,848.
3/1/2023	3,848.		3,848.
6/1/2023	3,848.		3,848.
9/1/2023	3,848.		3,848.
12/1/2023	3,848.		3,848.
3/1/2024	3,848.		3,848.
6/1/2024	3,848.		3,848.
9/1/2024	3,848.		3,848.
12/1/2024	3,848.		3,848.
3/1/2025	3,848.		3,848.
6/1/2025	3,848.		3,848.
9/1/2025	3,848.		3,848.
12/1/2025	3,848.		3,848.
3/1/2026	3,848.		3,848.
6/1/2026	3,848.		3,848.
9/1/2026	3,848.		3,848.
12/1/2026	3,848.		3,848.
3/1/2027	3,848.		3,848.
6/1/2027	3,848.		3,848.
9/1/2027	3,848.		3,848.
12/1/2027	3,848.		3,848.
3/1/2028	3,848.		3,848.
6/1/2028	3,848.		3,848.
9/1/2028	3,848.		3,848.
12/1/2028	3,848.		3,848.
3/1/2029	3,848.		3,848.
6/1/2029	3,848.		3,848.
9/1/2029	3,848.		3,848.
12/1/2029	3,848.		3,848.
3/1/2030	3,848.		3,848.
6/1/2030	3,848.		3,848.
9/1/2030	3,848.		3,848.
12/1/2030	3,848.		3,848.
3/1/2031	3,848.		3,848.
6/1/2031	3,848.		3,848.
9/1/2031	3,848.		3,848.
12/1/2031	3,848.		3,848.
3/1/2032	3,848.		3,848.
6/1/2032	3,848.		3,848.
9/1/2032	3,848.		3,848.
12/1/2032	3,848.		3,848.
3/1/2033	3,848.		3,848.
6/1/2033	3,848.		3,848.
9/1/2033	3,848.		3,848.

BOND DEBT SERVICE
Hardy County PSD
0% Interest Rate

Period Ending	Principal	Interest	Debt Service
12/1/2033	3,848.		3,848.
3/1/2034	3,848.		3,848.
6/1/2034	3,848.		3,848.
9/1/2034	3,848.		3,848.
12/1/2034	3,848.		3,848.
3/1/2035	3,848.		3,848.
6/1/2035	3,848.		3,848.
9/1/2035	3,848.		3,848.
12/1/2035	3,848.		3,848.
3/1/2036	3,848.		3,848.
6/1/2036	3,848.		3,848.
9/1/2036	3,848.		3,848.
12/1/2036	3,848.		3,848.
3/1/2037	3,848.		3,848.
6/1/2037	3,848.		3,848.
9/1/2037	3,848.		3,848.
12/1/2037	3,848.		3,848.
3/1/2038	3,848.		3,848.
6/1/2038	3,848.		3,848.
9/1/2038	3,848.		3,848.
12/1/2038	3,848.		3,848.
3/1/2039	3,848.		3,848.
6/1/2039	3,848.		3,848.
9/1/2039	3,848.		3,848.
12/1/2039	3,848.		3,848.
3/1/2040	3,848.		3,848.
6/1/2040	3,848.		3,848.
9/1/2040	3,848.		3,848.
12/1/2040	3,848.		3,848.
3/1/2041	3,848.		3,848.
6/1/2041	3,848.		3,848.
9/1/2041	3,848.		3,848.
12/1/2041	3,848.		3,848.
3/1/2042	3,848.		3,848.
6/1/2042	3,848.		3,848.
9/1/2042	3,848.		3,848.
12/1/2042	3,848.		3,848.
3/1/2043	3,848.		3,848.
6/1/2043	3,848.		3,848.
9/1/2043	3,848.		3,848.
12/1/2043	3,848.		3,848.
3/1/2044	3,848.		3,848.
6/1/2044	3,848.		3,848.
9/1/2044	3,848.		3,848.
12/1/2044	3,848.		3,848.
3/1/2045	3,848.		3,848.
6/1/2045	3,848.		3,848.
9/1/2045	3,848.		3,848.
12/1/2045	3,848.		3,848.
3/1/2046	3,848.		3,848.

BOND DEBT SERVICE
Hardy County PSD
0% Interest Rate

Period Ending	Principal	Interest	Debt Service
6/1/2046	3,848.		3,848.
9/1/2046	3,848.		3,848.
12/1/2046	3,848.		3,848.
3/1/2047	3,848.		3,848.
6/1/2047	3,848.		3,848.
9/1/2047	3,848.		3,848.
12/1/2047	3,848.		3,848.
3/1/2048	3,848.		3,848.
6/1/2048	3,848.		3,848.
9/1/2048	3,848.		3,848.
12/1/2048	3,848.		3,848.
3/1/2049	3,848.		3,848.
	<u>608,000.</u>		<u>608,000.</u>

(Form of)

ASSIGNMENT

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

Dated: _____, 20 ____.

In the presence of:

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. RATES
12. PUBLIC SERVICE COMMISSION ORDER
13. SIGNATURES AND DELIVERY
14. BOND PROCEEDS
15. SPECIMEN BOND
16. CONFLICT OF INTEREST
17. PROCUREMENT OF ENGINEERING SERVICES
18. SPECIAL CONDITION
19. EXECUTION OF COUNTERPARTS

We, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board of Hardy County Public Service District in Hardy County, West Virginia (the "Issuer") and the undersigned COUNSEL to the Issuer hereby certify, on this 3rd day of March, 2009, in connection with the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds" or the "Series 2009 A Bonds"), as follows:

1. **TERMS:** All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Resolution of the Issuer duly adopted February 25, 2009, and the Supplemental Resolution duly adopted February 25, 2009, (collectively, the "Bond Legislation").

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition or construction of the Project, the operation of the System,

the receipt of Grant proceeds or the Net Revenues, or in any way contesting or affecting the validity of the Bonds or the Grants, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other monies or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the pledge or application of monies and security or the collection of the Gross Revenues or the pledge of the Net Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are no outstanding bonds or obligations of the Issuer which rank on a parity with the Bonds or are secured by revenues or assets of the System.

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

Bond Resolution

Supplemental Resolution

Loan Agreement

Public Service Commission Orders

Infrastructure and Jobs Development Council Approval

County Commission Orders on Creation of District

County Commission Orders Appointing Current Boardmembers

Oaths of Office of Current Boardmembers

Rules of Procedure

Affidavit of Publication on Notice of Filing

Minutes of Current Year Organizational Meeting

Excerpt of Minutes on Adoption of Bond Resolution, Supplemental Resolution and First Draw Resolution

Environmental Health Services Permit

Evidence of Insurance

6. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "Hardy County Public Service District." The Issuer is a public service district and public corporation duly created by The County Commission of Hardy County and presently existing under the laws of, and a public corporation and political subdivision of, the State of West Virginia. The Issuer operates the System in Hardy County, West Virginia. The governing body of the Issuer is its Public Service Board consisting of 3 duly appointed, qualified and acting members whose names and dates of commencement and termination of current terms of office are as follows:

<u>Name</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Clyde M. See, Jr.	January 1, 2007	December 31, 2012
Melvin Franklin Shook, Jr.	July 1, 2006	June 30, 2011
Matthew Gapp	July 1, 2004	June 30, 2009

The names of the duly elected, appointed, qualified and acting officers of said Public Service Board of said Issuer for the calendar year 2009 are as follows:

Chairman	–	Matthew Gapp
Secretary	–	Connie Sherman

The duly appointed and acting counsel to the Issuer is Thomas R. Michael, Lost Creek, West Virginia.

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

8. MEETINGS, ETC.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project and the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. CONTRACTORS' INSURANCE, ETC.: All contractors will be required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation and Loan Agreement is in full force and effect.

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

11. RATES: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered on January 30, 2006, in Case No 05-1004-PSD-CN, which became Final Order on February 19, 2006, and Commission Order dated April 10, 2006, and Recommended Decision entered November 20, 2008, which became Final Order on December 10, 2008, approving the rates and charges for the services of the System, and has adopted a resolution prescribing such rates and charges. The time for appeal of such Order has expired prior to the date hereof without any appeal, and such rates and charges will become effective upon completion of the Project.

12. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered January 30, 2006, which became a Final Order of the Public Service Commission on February 19, 2006, in Case No. 05-1004-PSD-CN, and Commission Order dated April 10, 2006, and the Recommended Decision entered on November 20, 2008, which became Final Order on December 10, 2008 and Commission Order dated February 9, 2009, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project approving the financing for the Project and approving the rates and charges of the System. The time for appeal of the Order has expired prior to the date hereof without any appeal and remains in full force and effect.

13. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Chairman did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, numbered AR-1, dated the date hereof, by his or her manual signature, and the undersigned Secretary did officially cause the official seal of the Issuer to be affixed upon the Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate, register and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

14. BOND PROCEEDS: On the date hereof, the Issuer received \$122,376 from the Authority and the Council, being a portion of the principal amount of the Series 2009 A Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

15. SPECIMEN BOND: Delivered concurrently herewith is a true and accurate specimen of the Bond.

16. CONFLICT OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

17. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

18. SPECIAL CONDITION: The Issuer shall not spend, or request the disbursement, of the \$115,000 (future change orders), until such change order or change orders have been approved by a majority vote of the Council.

Any change orders with regard to the Green River Contract or the construction/project contingency shall be approved by the Council.

19. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of HARDY COUNTY PUBLIC SERVICE DISTRICT as of the date first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Matthew B. Hays

Chairman

Connie E. Sherman

Secretary

Counsel to Issuer

02.20.09
378080.00005

WITNESS our signatures and the official seal of HARDY COUNTY PUBLIC SERVICE DISTRICT as of the date first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Chairman

Secretary

Thomas R. Michal

Counsel to Issuer

02.20.09
378080.00005

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

CERTIFICATE OF ENGINEER

I, Clay Riley, Registered Professional Engineer, West Virginia License No. 15634, of Thrasher Engineering, Inc., Clarksburg, West Virginia, hereby certify this 3rd day of March, 2009 as follows:

1. My firm is engineer for the acquisition and construction of a public sewerage facility (the "Project" or the "System") of Hardy County Public Service District (the "Issuer") to be constructed primarily in Hardy County, West Virginia, which acquisition and construction are being financed by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Issuer on February 25, 2009, as supplemented by Supplemental Resolution duly adopted by the Issuer on February 25, 2009 (collectively, the "Resolution"), and the Loan Agreement for the Bonds, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated March 3, 2009, (the "Loan Agreement").

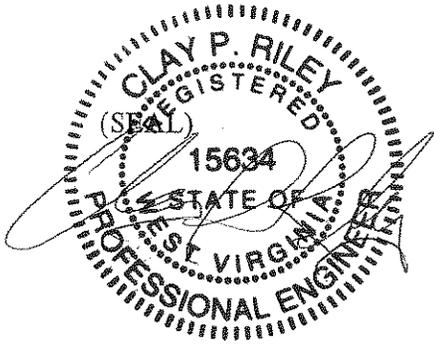
2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project and (ii) paying certain costs of issuance of the Bonds and related costs.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the Council and the Authority and any change orders approved by the Issuer, the Authority, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least forty years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule B attached hereto as Exhibit A and in reliance upon the opinion of Thomas R. Michael, of even date herewith, all successful bidders will have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds will be verified for accuracy prior to the execution of construction contracts; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the Council and the bid forms provided to the bidders contain the critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws

of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of Griffith & Associates, Certified Public Accountants, of even date, as of the effective date thereof, the rates and charges for the System as approved by the Public Service Commission of West Virginia and adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement and the Resolution; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

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WITNESS my signature and seal on the day and year first written above.



THRASHER ENGINEERING, INC.



Clay Riley, P.E.
West Virginia License No. 15634

02.18.09
378080.00005

**SCHEDULE B
HARDY COUNTY PUBLIC SERVICE DISTRICT
CALEDONIA HEIGHTS SANITARY SEWER EXTENSION 2008S-1011
Sources and Uses**

A. COST OF PROJECT	TOTAL	IJDC Loan
1 Construction (Green River)	266,237	266,237
Contingency	27,763	27,763
2 Technical Services - (Thrasher)		
a Planning	7,500	7,500
b Design	51,000	51,000
c Engineering / Construction	41,000	41,000
d Special Services	20,000	20,000
3 Legal & Fiscal		
a Legal (Michael)	10,000	10,000
b Accounting (Griffith)	10,000	10,000
4 Administrative (HCPD)	10,000	10,000
5 Sites & Lands	5,000	5,000
6 Miscellaneous	3,000	3,000
7 Future Change Orders	115,000	115,000
8 Project Contingency	10,604	10,604
9 TOTAL of Lines 1 through 8	577,104	577,104
B. COST OF FINANCING		
10 Funded Reserve	15,396	15,396
11 Registrar	500	500
12 Bond Counsel	15,000	15,000
13 Cost of issuance (lines 10 through 12)	30,896	30,896
14 TOTAL PROJECT COST line 9 plus line 13	608,000	608,000
C. SOURCES OF OTHER FUNDS		
15 Federal Grants		
16 State Grants		
17 Other Grants		
18 TOTAL GRANTS Lines 15 through 17	0	0
19 Size of Bond Issue (line 14 minus Line 18)	608,000	608,000

Matthew B. Hogg
Hardy County PSD

March 3, 2009
Date

Chae Kelly
Thrasher Engineering

March 3, 2009
Date



March 3, 2009

CPA CERTIFICATE

Hardy County Public Service District
Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

Hardy County Public Service District
Moorefield, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the sewer rates and charges set forth in the Recommended Decision of the Public Service Commission of West Virginia entered on January 30, 2006, in Case No 05-1004-PSD-CN, which became Final Order on February 19, 2006, and Commission Order dated April 10, 2006, and Recommended Decision entered November 20, 2008, which became Final Order on December 10, 2008, the projected operating expenses and the anticipated customer usage as furnished to us by Thrasher Engineering, Inc., Consulting Engineers, it is our opinion that the revenues from such rates and charges will be sufficient to provide for all operating expenses of the sewerage system (the "System") of Hardy County Service District (the "Issuer"), and to leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund) to be issued on the date hereof.

Very truly yours,

Michael D. Griffith, CPA, AFI
Griffith & Associates, PLLC

MDG/dk

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Chairman of the Public Service Board of Hardy County Public Service District in Hardy County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$608,000 Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), of the Issuer, dated March 3, 2009, (the "Series 2009 A Bonds" or "Bonds"), hereby certify, on this the 3rd day of March, 2009, as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Resolution duly adopted by the Issuer on February 25, 2009 as supplemented by Supplemental Resolution duly adopted by the Issuer on February 25, 2009 (collectively, the "Bond Resolution"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on March 3, 2009, the date on which the Bonds are being physically delivered in exchange for a portion of the principal amount of the Series 2009 A Bonds (100% par value), and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Resolution pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2009 A Bonds were sold on March 3, 2009, to the Authority, pursuant to a loan agreement dated March 3, 2009, by and between the Issuer and the Authority, on behalf of the Council, for an aggregate purchase price of \$608,000 (100% of par), at which time, the Issuer received \$122,376 from the Authority and the Council, being a portion of the principal amount of the Series 2009 A Bonds. No accrued interest has been or will be paid on the Series 2009 A Bonds. The balance of the principal amount of the Series 2009 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2009 A Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of a public sewerage facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds on the acquisition and construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Series 2009 A Bonds Reserve Account, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the acquisition and construction of the Project on or before January 1, 2010. The acquisition and construction of the Project is expected to be completed by July 1, 2009.

8. The total cost of the Project financed from the proceeds of the Bonds and grants is estimated at \$608,000. Sources and uses of funds for the Project are as follows:

SOURCES

Gross Proceeds of the Series 2009 A Bonds	<u>\$608,000</u>
Total Sources	<u>\$608,000</u>

USES

Acquisition and Construction of Project	\$577,104
Fund the Series 2009 A Bonds Reserve Account	\$15,396
Costs of Issuance	<u>\$15,500</u>
Total Uses	<u>\$608,000</u>

9. Pursuant to Article V of the Bond Resolution, the following special funds or accounts have been created or continued relative to the Series 2009 A Bonds:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2009 A Bonds Construction Trust Fund;
- (4) Series 2009 A Bonds Sinking Fund; and
- (5) Series 2009 A Bonds Reserve Account.

10. Pursuant to Article VI of the Bond Resolution, the proceeds of the Bonds will be deposited as follows:

A. Series 2009 A Bonds proceeds in the amount of \$15,396 shall be deposited in the Series 2009 A Bonds Reserve Account.

B. The balance of the proceeds of the Series 2009 A Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2009 A Bonds Construction Trust Fund for payment of the costs of the acquisition and construction of the Project, including, without limitation, costs of issuance of the Series 2009 A Bonds and related costs.

11. Monies held in the Series 2009 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2009 A Bonds and will not be available to meet costs of acquisition and construction of the Project. Monies in the Series 2009 A Bonds Reserve Account will be used only for the purpose of paying principal of and interest, if any, on the Series 2009 A Bonds as the same shall become due, when other monies in the Series 2009 A Bonds Sinking Fund are insufficient therefor. All investment earnings on monies in the Series 2009 A Bonds Sinking Fund and Series 2009 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2009 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 3 months of the date hereof.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2009 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the acquisition and construction of the Project within 9 months from the date of issuance thereof.

15. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

16. The amount designated as costs of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

19. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

20. The Issuer shall use the Bond proceeds solely for the costs of the acquisition and construction of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

21. The Bonds are not federally guaranteed.

22. The Issuer has retained the right to amend the Bond Resolution authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain governmental or public purpose bonds.

23. The Issuer has either (a) funded the Series 2009 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due, on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2009 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2009 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due, on the Bonds in the then current or any succeeding year. Monies in the Series 2009 A Bonds Reserve Account and the Series 2009 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the acquisition and construction of the Project.

24. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

25. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

26. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

27. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

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WITNESS my signature as of the date first written above.

HARDY COUNTY
PUBLIC SERVICE DISTRICT

By: Matthew B. Bopp
Its: Chairman

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IN RE: HARDY COUNTY PUBLIC SERVICE DISTRICT

IN THE MATTER OF THE CREATION OF A PUBLIC SERVICE DISTRICT UNDER THE PROVISIONS OF ARTICLE 13A, CHAPTER 16, OF THE CODE OF WEST VIRGINIA TO BE KNOWN AS THE HARDY COUNTY PUBLIC SERVICE DISTRICT

This matter came on again to be further considered on this 2nd day of July, 1974, upon the motions a-
 before made and considered by this Court; upon this Courts own motion and proposal for the creation of a Pub-
 Service District for Water and Sewarage Services, as set forth and contained in the order of this Court enter-
 at a regular session of this Court on the 7th day of May, 1974; upon this Court at the same said session have
 fixed the 15th day of June, 1974, and the Hardy County Court House, at Moorefield, in said county, as the date
 and place of a public hearing on the creation of the proposed Public Service District; and upon said date so
 fixed for said hearing being not more than forty days nor less than twenty days from the date of the said act
 by this Court in proposing the creation of said Public Service District; upon the Clerk of this Court having
 caused notice of such hearing and the time and place thereof, and setting forth therein a description of all
 of the territory proposed to be included therein, to be given by the publication thereof as a Class I legal
 advertisement in compliance with the provisions of West Virginia Code Chapter 59, Article 3, in the Moorefield
 Examiner, a newspaper published and of general circulation in Hardy County, West Virginia; and in addition by
 causing a like notice to be posted in five conspicuous places in the proposed Public Service District, which
 sa publication and posting were made on the 5th day of June, 1974, the same being not less than ten days pri-
 to the time of said hearing; upon said public hearing having been held by this Court at the time and place for
 the purpose aforesaid; upon all persons residing in or owning or having any interest in property in said
 proposed Public Servie District having been afforded an opportunity to be heard for and against its creation;
 upon no written protest having been offered or filed by thirty percent or more of the qualified voters re-
 gistered and residing within said district nor by any person or party; upon this Court, at said hearing, having
 considered had determined the feasibility of the creation of the propoes district; upon this Court having thus
 determined the same to be feasible, and having further determined that the construction or acquisition by
 purchase and otherwise, and the maintenance, operation, improvement and extension of public service properties
 by said Public Service District will be conducive to the preservation of public health, comfort and con-
 venience of such area; upon consideration of all prior orders and actions heretofore entered and taken by this
 Court; and upon all other matters and evidence before this Court.

Wherefore, it is adjudged and ordered that this Court has considered and doth hereby determine

that the creation of the proposed Public Service District is feasible, and, further, that the construction or acquisition by purchase and otherwise, and maintenance, operation, improvement and extension of public service facilities by said Public Service District will be conducive to the preservation of public health, comfort and convenience of said area.

It is further adjudged and ordered that this Court doth hereby create a Public Service District under and pursuant to the provisions of the Code of West Virginia to be known as the Hardy County Public Service District for Water and Sewerage Services, to be a public corporation and a political subdivision of the State of West Virginia, with power of perpetual succession and having such purposes and with all other powers granted by law, and embracing and having such purposes, powers and jurisdiction given, set forth and provided by said Article 13A, Chapter 16, of the Code of West Virginia as amended; and it is further adjudged and ordered that the Public Service District hereby created shall embrace all of the territory lying within and coextensive with the boundaries of Hardy County, West Virginia, with the exception and excluding therefrom all of the territory therein and lying and included within the municipal corporations of Moorefield and Gardensville; and it is further ordered that the name of said Public Service District shall be the Hardy County Public Service District.

It is further adjudged and ordered that all power of the said Public Service District shall be and is vested in and shall be exercised by a public service board consisting of three members and that each member shall reside within the limits of the Hardy County Public Service District, and that said members shall constitute the said public service board of the Hardy County Public Service District without any further act or proceedings.

It is further ordered that the following persons be and are appointed members of the Public Service Board of the Hardy County Public Service District for the respective terms indicated, namely, that Charles Vetter be and is appointed for a four year term, that Matthew Gapp be and is appointed for six year term, and that Neil Sherman be and is appointed for a two year term; and said members shall qualify by taking the oath of office as soon as practicable to be administered by the Clerk of this Court, and shall proceed to organize as required by law.

IN RE: COUNTY COURT OF HARDY COUNTY, WEST VIRGINIA

DONALD B. POWNELL

This Agreement, Made and entered into this 1st day of July, 1974, by and between the County Court

STATE OF WEST VIRGINIA

HARDY COUNTY, TO-WIT:

I, Sue K. Halterman, Clerk of the County Commission of Hardy County, West Virginia do certify that the foregoing (and annexed) writing is a true and correct copy of an Order for the creation of the Hardy County Public Service District and recorded in the records of the Hardy County Clerk's Office in Police and Fiscal Order Book Number 10 at Page 505.

Given under my hand and the seal of the Commission this

20th day of September, 1998.

Sue K. Halterman
County Commission, Hardy County, West Vir.

By: _____

6/74

NOTICE OF PUBLIC
HEARING TO
ALL PERSONS
OWNING OR
ANY INTEREST IN
PROPERTY IN THE
PROPOSED HARDY
COUNTY PUBLIC
SERVICE DISTRICT
FOR WATER AND
SEWERAGE

The Hardy County Court will conduct a public hearing on Saturday, June 15, 1974, at the hour of 10:00 A.M., in the Circuit Court room of the Hardy County Courthouse at Moorefield, West Virginia, to consider and determine the feasibility of the creation of a proposed Public Service District for Water and Sewerage. The territory proposed to be included within the proposed Public Service District is all of the territory lying within and co-extensive with the boundaries of Hardy County, West Virginia, but excluding therefrom all of the territory therein and lying and included within the boundaries of the municipal corporation of Moorefield and Wardensville. The name of the proposed Public Service District is to be The Hardy County Public Service District.

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 at said hearing.

If the Hardy County Court at such hearing shall determine that the construction or acquisition by purchase or otherwise, and maintenance, operation, improvement, and extension of public service property by such Public Service District will be conducive to the preservation of public health, comfort and convenience of such area, then the Hardy County Court shall by order create the Hardy County Public Service District for Water and Sewerage, and such order shall be conclusive and final in that regard.

If at such hearing written protest is filed by thirty percent or more of the

be approved by a majority vote of the qualified registered voters voting at a referendum to be called by the Hardy County Court for such purpose:

Sue K. Halterman,
Clerk
Hardy County Court
651c

AFFIDAVIT OF PUBLICATION

Cost of Publication _____

State of West Virginia
County of Hardy, to wit:

I, Phoebe Fisher Heishman, being first sworn upon my oath, do depose and say that I am President of the R. E. Fisher Company, a corporation, and publisher of the newspaper entitled THE MOOREFIELD EXAMINER, a Democratic newspaper; that I have been duly authorized by the Board of Directors of such corporation to execute all affidavits of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published twice weekly on Wednesdays and Saturdays, for at least fifty weeks during a calendar year, in the municipality of Moorefield, Hardy County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, that the annexed

notice of HARDY COUNTY COURT - PUBLIC HEARING

HARDY COUNTY PUBLIC SERVICE DISTRICT -
WATER, SEWERAGE

was duly published in said newspaper once a week for 1 successive weeks, commencing with the issue of 5 day of June 19 74, and ending with the issue of the 5 day of June 19 74 (and was posted at the n/a on the _____ day of _____, 19 _____).

Phoebe Fisher Heishman
Phoebe Fisher Heishman, Publisher
The Moorefield Examiner

Taken, subscribed and sworn to before me in my said county this 14 day of Oct., 19 88.

My commission expires Dec. 10, 1996

OFFICIAL SEAL
LEWIS E. COBY, Notary Public
State of West Virginia

Lewis E. Coby
Notary Public of Hardy County, WV

3/7/74

*Order and Council
Water-Board No,*

pg 493

IN THE COUNTY COURT OF HARDY COUNTY, WEST VIRGINIA

IN RE: HARDY COUNTY PUBLIC SERVICE DISTRICT

In the matter of the creation of a Public Service District under the provisions of Article 13A, Chapter 16, of the Code of West Virginia to be known as the Hardy County Public Service District.

On motion of several citizens of Hardy County, West Virginia, it is now ordered that this Court on its own motion doth hereby propose the creation of a Public Service District for the purposes of construction, acquisition by purchase or otherwise, and the maintenance, operation, improvement and extension of properties supplying water or sewerage services, and for the purposes of the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public, industrial, public, private or other uses, and for the further purposes of collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, and doth propose that the territory to be included within the said Public Service District shall be all of the territory lying within and coextensive with the boundaries of Hardy County, West Virginia, excluding therefrom all of the territory therein lying and included within the boundaries of the municipal corporations of Moersfield and Wardensville; and the Court doth further propose that the name of the said Public Service District shall be the Hardy County Public Service District.

It is further ordered that a public hearing shall be held by this Court on the creation of the said proposed Public Service District and that said hearing shall be held on the 15th day of June, 1974, at the hour 10 o'clock A. M., and shall be held at the Circuit Court Room, of the Hardy County Courthouse at Moersfield, West Virginia.

WEST VIRGINIA COMMERCE AND TRADE COMMISSION

The Court further ordered that the Clerk of this Court do cause to be published and posted proper notice of the time, place and purpose of a meeting. Publishing and posting shall be by publishing the said notice on one issue of the Moorefield Examiner, a newspaper published in Hardy County, West Virginia, in conformance with West Virginia Code, Chapter 59, Article 1, as Class I, Legal Advertisement, and posting shall be by posting the said notice in at least five conspicuous places within the proposed Service District, and such publication and posting shall be made not less than ten days before the date fixed for the said hearing.

Entered May 7, 1974.

ENTER:

J. Newton Teal
PRESIDENT

MEMORANDUM
TO: [illegible]
FROM: [illegible]
SUBJECT: [illegible]

THE COURT
ORDERED THAT
THE CLERK OF THIS COURT
DO CAUSE TO BE PUBLISHED
AND POSTED PROPER NOTICE
OF THE TIME, PLACE AND PURPOSE
OF A MEETING.

...not interested in...
County Court to...
the Court...
from South...
at the...
from Moore...

...through...
...preparing...
...the...
...North Branch Valley...
...through... to...

STATE OF WEST VIRGINIA

HARDY COUNTY, TO-WIT:

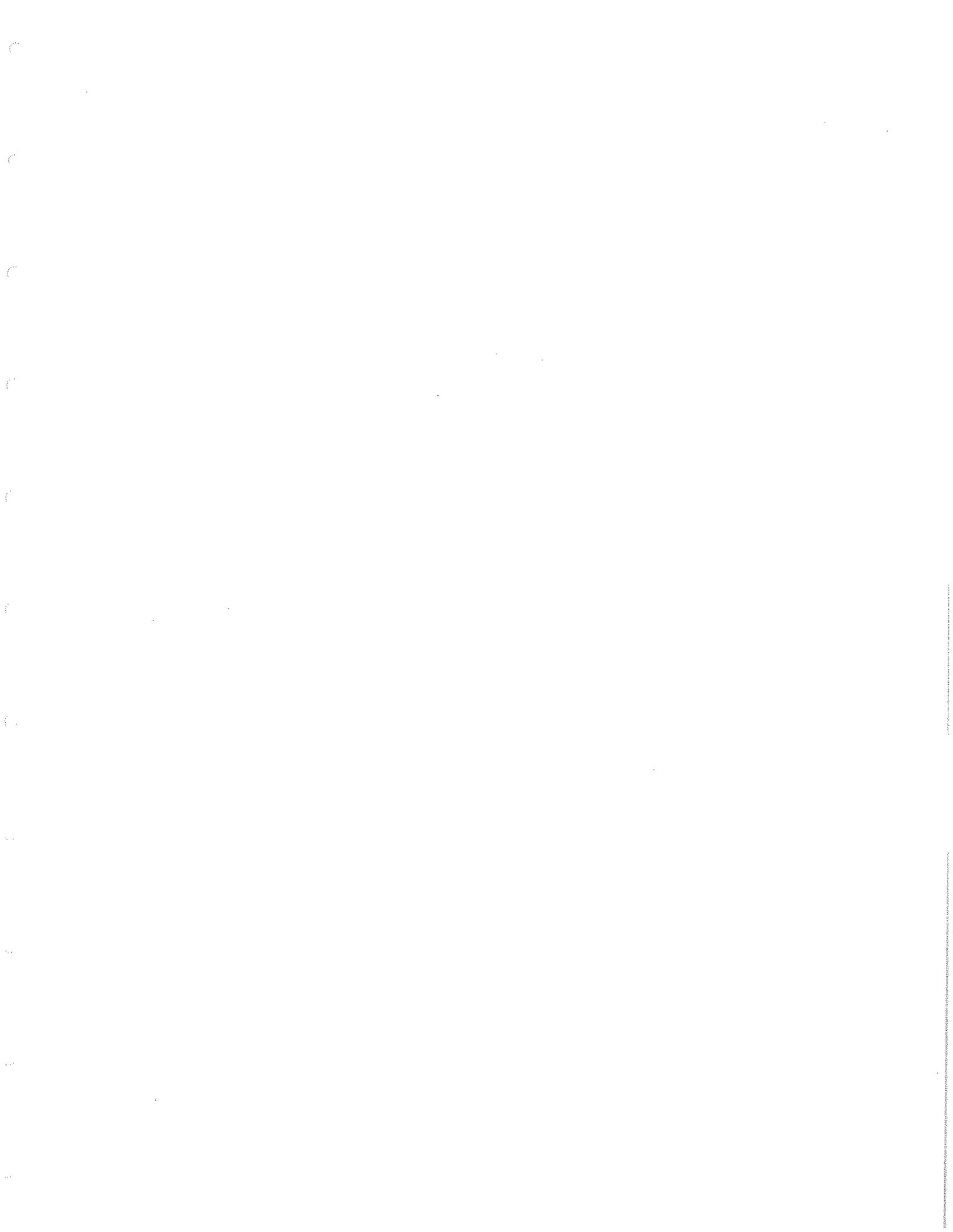
I, Sue K. Halterman, Clerk of the County Commission of Hardy County, West Virginia do certify that the foregoing (and annexed) writing is a true and correct copy of an Order for the creation of the Hardy County Public Service District and recorded in the records of the Hardy County Clerk's Office in Police and Fiscal Order Book Number 10 at Page 493.

Given under my hand and the seal of the Commission this

20th day of September 1988.

Sue K. Halterman
County Commission, Hardy County, West Virginia.

By: _____ D



THE COMMISSION
ROGER D. CHAMP
WM. J R KEPLINGER
STANLEY B. MOYER



THE COUNTY COMMISSION OF HARDY COUNTY

Gregory L. Ely, Clerk

Dec. 29, 2006

To: Hardy County Public Service District

Please be advised that on this 29th day of December at a Special County Commission meeting for the purpose of various Board Appointments. The Hardy County Commission did on this day appoint

Mr. Clyde M. See Jr. whose residence is
535 Old Fields Road
Old Fields WV 26845

to the Hardy County Public Service District Board for a 6 year term running from January 01, 2007 thru December 31, 2012.



Gregory L. Ely Hardy County Clerk



THE COMMISSION
ROGER D. CHAMP
WM. J R KEPLINGER
STANLEY B. MOYER

THE COUNTY COMMISSION OF HARDY COUNTY

Gregory L. Ely, Clerk

July 24th 2006

To: Hardy County Public Service District
Re: Appointment to the PSD Board

Be it known that on a regularly scheduled meeting dated the 18th day of July 2006, that due to the anticipated future water project(s) in the Baker area, it was determined by the Hardy County Commission that a representative from said area should be appointed to the Hardy County Public Service District Board. Therefore the Hardy County Commission did appoint:

Mr. Melvin Franklin Shook Jr.,
350 Parker Hollow Road
Baker WV, 26801

to the said PSD Board for a regular term, being retroactive to July 1st 2006.
That is to say from July 01st 2006 thru June 30th 2011.

Gregory L. Ely Hardy County Clerk



THE COMMISSION
ROGER D. CHAMP
WM. J R KEPLINGER
STANLEY B. MOYER

THE COUNTY COMMISSION OF HARDY COUNTY

Gregory L. Ely, Clerk

March 19th, 2008

To: Hardy County Public Service District

Please be advised that at a regularly scheduled Commission Meeting dated on the 15th day of June, 2004

Mr. Matthew Gapp was therein re-appointed to a 6 year term on the Hardy County Public Service District Board, commencing on the 1st day of July 2004 thru the 30th day of June 2009.

sincerely

A handwritten signature in black ink, appearing to read "Gregory L. Ely", is written over a horizontal line.

Gregory L. Ely Hardy County Clerk

OATH

State of West Virginia, County of Hardy EE:

I, MATTHEW G. GAPP, do solemnly swear that I will support the constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of my office of Board Member, Hardy County Public Service District

to the best of my skill and judgment, so help me God.

Matthew G. Gapp

Subscribed and sworn to before the undersigned, this the15th.....day
of June.....~~XX~~.....2004

Janet S. Ferrell

Clerk County Commission, Hardy.....County, W. Va.



OATH OF OFFICE AND CERTIFICATE

**STATE OF WEST VIRGINIA
COUNTY OF HARDY, TO-WIT:**

I, Melvin F. Shook Jr., do solemnly swear that I will support the Constitution of The United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of

HARDY COUNTY PUBLIC SERVICE DISTRICT BOARD

To the best of my skill and judgement *SO HELP ME GOD.*

Print name and address

MELVIN F. SHOOK JR.

350 PARKER HOLLOW ROAD

BAKER WV, 26801

(signature of affiant)



Subscribed and sworn to before me, in said County and State, this 22ND day of

AUGUST, 2006.



GREGORY L. ELY, CLERK
HARDY COUNTY COMMISSION

By _____

OATH OF OFFICE AND CERTIFICATE

**STATE OF WEST VIRGINIA
COUNTY OF HARDY, TO-WIT:**

I, CLYDE M. SEE JR., do solemnly swear that I will support the Constitution of The United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of

HARDY COUNTY PUBLIC SERVICE DISTRICT BOARD

To the best of my skill and judgement *SO HELP ME GOD.*

Print name and address

Clyde M. See Jr.

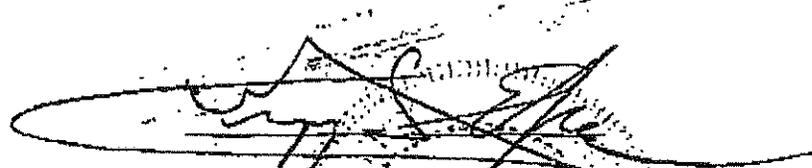
Po Box 700

Moorefield WV 26836

(signature of affiant)

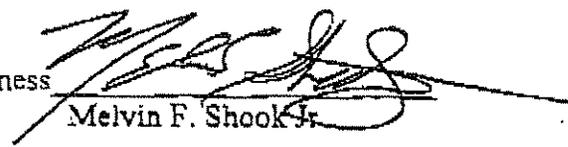


Subscribed and sworn to before me, in said County and State, this 09th day of
January, 2007.



GREGORY L. ELY, CLERK
HARDY COUNTY COMMISSION

Witness



Melvin F. Shook Jr.

RULES OF PROCEDURE

HARDY COUNTY PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: HARDY COUNTY PUBLIC SERVICE DISTRICT.

Section 2. The principal office of this Public Service District will be located at Post Office Box 209, Moorefield, Hardy County, West Virginia.

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

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

ARTICLE II

PURPOSE

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

ARTICLE III

MEMBERSHIP

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

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

ARTICLE IV

MEETINGS OF THE PUBLIC SERVICE BOARD

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

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

Section 3. Unless otherwise agreed, notice to members of regular meetings shall not be required. Unless otherwise waived, notice of each special meeting of the membership shall be given to all members by the Secretary by fax, telephone, mail or other satisfactory means at least 3 days 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 thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), notice of the date, time, place and agenda of all regularly scheduled meetings of such Public Service Board, and the date, time, place and purpose of all special meetings of such Public Service Board, shall be made available, in advance, to the public and news media (except in the event of an emergency requiring immediate action) as follows:

A. Regular Meetings. A notice shall be posted and maintained by the Secretary of the Public Service Board of the Public Service District at the front door or bulletin board of the Hardy County Courthouse and at the front door or bulletin board of the place fixed for regular meetings of the Public Service Board of the date, time and place fixed and entered of record by the Public Service Board for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same locations by the Secretary of the Public Service Board not less than 72 hours before such regular meeting is to be held. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the same locations as soon as feasible after such cancellation or postponement has been determined.

B. Special Meetings. A notice shall be posted by the Secretary of the Public Service Board at the front door or bulletin board of the Hardy County Courthouse and at the front door or bulletin board of the place fixed for the regular meetings of the Public Service Board not less than 72 hours before a specially scheduled meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the same locations as soon as feasible after such cancellation has been determined.

ARTICLE V

OFFICERS

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

Section 2. The officers of the Public Service Board shall be elected each year by the members at the first meeting held in such year. The officers so elected shall serve until the next annual

election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected hereinabove provided.

ARTICLE VI

DUTIES OF OFFICERS

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

Section 2. The Vice-Chairman shall have the powers of the Chairman, in the absence of the 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. The Secretary shall, together with the Chairman, sign the minutes of the meetings at which he or she is present. The Secretary shall have charge of the minute book, be the custodian of the Common Seal of the District and all deeds and other writings and papers of the Board. The Secretary shall also perform such other duties as he or she may have under law by virtue of the office or as may be conferred from time to time by the members of the Board, these Rules of Procedure or as prescribed by law.

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

Section 5. If the Chairman, Secretary or Treasurer is absent from any meeting, the remaining members of the Board shall select a temporary chairman, secretary or treasurer, as necessary, who shall have all of the powers of the absent officer during such period of absence.

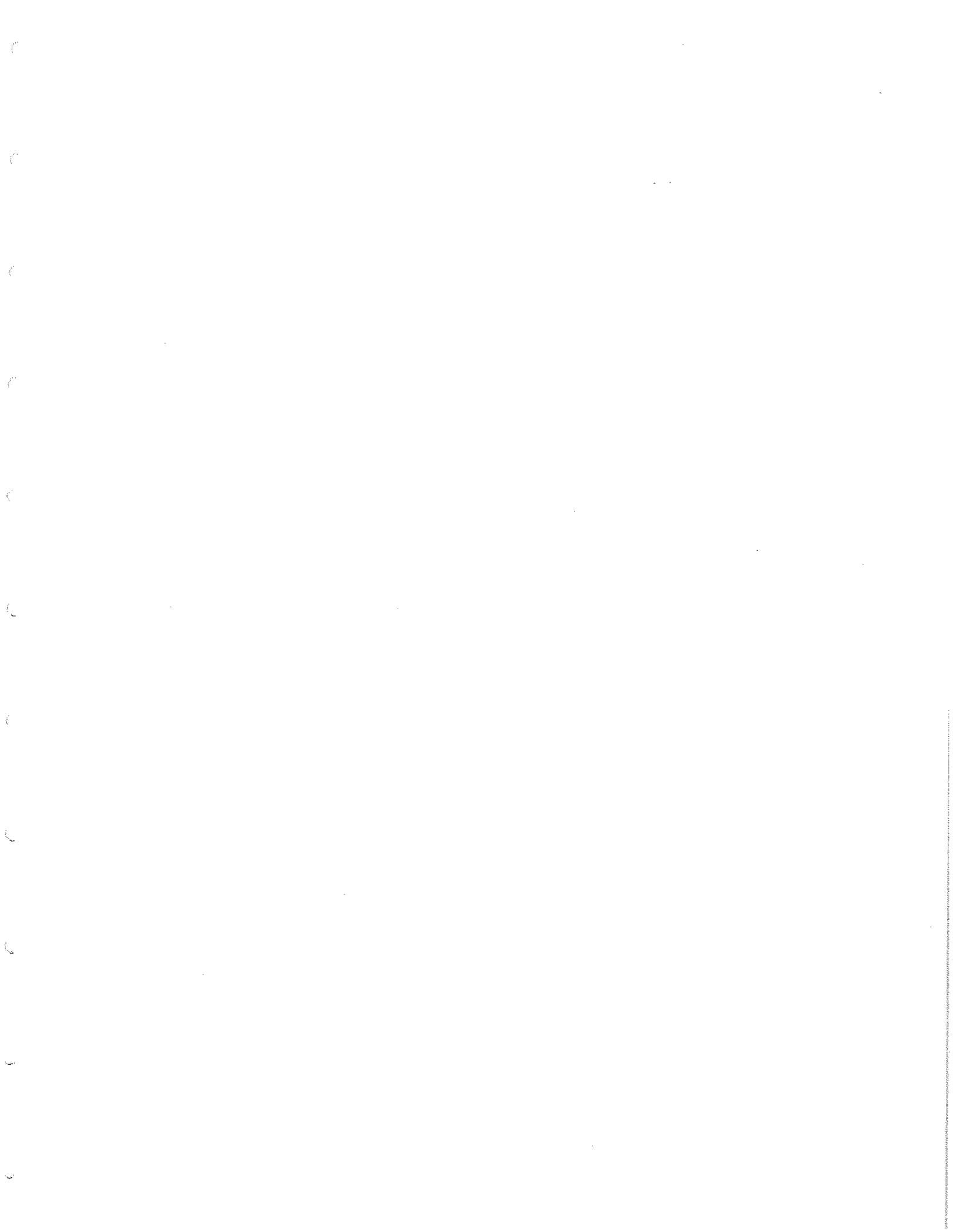
ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

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

These Rules of Procedure shall replace any and all previous rules of procedure, bylaws or similar rules heretofore adopted by the District.

Adopted this 14th day of September, 2001.



March 3, 2009

Hardy County Public Service District
Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

Hardy County Public Service District
Moorefield, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs
Development Council
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Hardy County Public Service District (the "Issuer"), a public service district, public corporation and political subdivision created and existing under the laws of the State of West Virginia, of its \$608,000 Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated March 3, 2009, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal only to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including March 1, 2049, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of a public sewerage facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

We have also examined the applicable provisions of the Act, the Bond Resolution duly adopted by the Issuer on February 25, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 25, 2009, (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

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

1. The Issuer is a duly created and validly existing public service district, public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the Council and cannot be amended by the Issuer so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer without the written consent of the Authority and the Council.

3. The Bond Legislation and all other necessary orders and resolutions have been duly and effectively adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, all in accordance with the terms of the Bonds and the Bond Legislation.

5. The Bonds are, under the Act, exempt from taxation by the State of West Virginia and the other taxing bodies of the State, and the interest on the Bonds, if any, is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

6. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Loan Agreement and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion and the application of equitable remedies in appropriate cases.

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

Very truly yours,


STEPTOE & JOHNSON PLLC

LAW OFFICE

Thomas R. Michael
ATTORNEY AT LAW
P.O. BOX 250
LOST CREEK, WEST VIRGINIA, 26385-0250

PHONE 304-745-5904

FAX 304-745-5907

EMAIL tom_michael@yahoo.com

March 3, 2009

Hardy County Public Service District
Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

Hardy County Public Service District
Moorefield, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

Stephoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to Hardy County Public Service District, a public service district, in Hardy County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds dated March 3, 2009, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement"), the Bond Resolution duly adopted by the Issuer on February 25, 2009, as supplemented by the Supplemental Resolution duly adopted by the Issuer on February 25, 2009, (collectively, the "Bond Legislation"), orders of The County Commission of Hardy County relating to the Issuer and the appointment of members of the Public Service Board of the Issuer, and other documents, papers, agreements, instruments and certificates relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and political subdivision of the State of West Virginia.

2. The members and officers of the Public Service Board of the Issuer have been duly, lawfully and properly appointed and elected, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

3. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority thereto, constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.

4. The Bond Legislation has been duly adopted by the Issuer and is in full force and effect.

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

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, all requisite orders, certificates and approvals from The County Commission of Hardy County, the West Virginia Department of Environmental Protection and the Council, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received all requisite orders and approvals from the Public Service Commission of West Virginia, including the Recommended Decision of the Public Service Commission of West Virginia entered January 30, 2006, which became a Final Order of the Public Service Commission on February 19, 2006, in Case No. 05-1004-PSD-CN, and Commission Order dated April 10, 2006, and the Recommended Decision entered on November 20, 2008, which became Final Order on December 10, 2008 and Commission Order dated February 9, 2009, among other things, granting a certificate of convenience and necessity for the Project, approving the financing for the Project. The time for appeal of the Commission Order has expired prior to the date hereof without any appeal and remains in full force and effect.

7. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds, the Loan Agreement, the Resolution, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or pledge of the Net Revenues for the Bonds.

8. Prior to the execution of construction contracts by the Issuer, I will verify that all successful bidders have made the required provisions for all insurance and payment and performance bonds and I will verify such insurance policies and bonds for accuracy. Prior to the execution of construction contracts by the Issuer, I will review the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, and verify that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to

protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Bond Legislation and the Loan Agreements; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,


THOMAS R. MICHAEL

LAW OFFICE

Thomas R. Michael
ATTORNEY AT LAW
P.O. BOX 250
LOST CREEK, WEST VIRGINIA, 26385-0250

PHONE 304-745-5904

FAX 304-745-5907

EMAIL tom_michael@yahoo.com

March 3, 2009

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

Re: Hardy County Public Service District
Caledonia Heights Sewer Project
IJDC No. 2008S-1011
FINAL TITLE OPINION

Dear Sirs:

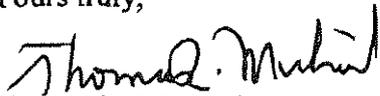
I represent the Hardy County Public Service District with regard to a proposed Project to transmit sewage from Caledonia Heights in Hardy County to the Town of Moorefield for treatment, and I provide this final title opinion on behalf of the Hardy County Public Service District to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council with regard to the Infrastructure Fund financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the Hardy County Public Service District is a duly created and existing public service district possessed with all the powers and authority granted to public service districts under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project.
2. That the Hardy County Public Service District has obtained approval for all necessary permits and approvals for the construction of the Project.
3. That the Hardy County Public Service District has a treatment agreement with the Town of Moorefield for flows from Caledonia Heights, approved by the Public Service Commission. (Case No. 08-1028-PSD-C).
4. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Thrasher Engineering, the consulting engineers for the Project.

5. That I have examined the records on file in the Office of the Clerk of the County Commission of Hardy County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Hardy County Public Service District has acquired legal title or such other estate or interest in the necessary site components for the Project, including 100% of the easements and/or rights-of-way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facilities to be constructed. The project requires no fee acquisitions. The project requires two easements, which have been acquired.
6. That the project also requires a rail crossing, and a License Agreement has been obtained from the West Virginia Rail Authority.
7. That the two easements and a memorandum of license have been duly recorded in the aforesaid Clerk's Office in order to protect the legal title to and interest of the Hardy County Public Service District.

If you have any questions regarding any of the information contained in this final title opinion, please contact this office.

Yours truly,


Thomas R. Michael

cc: Logan Moyers, Manager, Hardy County Public Service District
John Stump, Esq., Steptoe & Johnson
Clay Riley, Thrasher Engineering

AFFIDAVIT OF PUBLICATION

Cost of Publication \$99.25

State of West Virginia
County of Hardy, to wit:

I, Phoebe Fisher Heishman, being first sworn upon my oath, do depose and say that I am President of the R. E. Fisher Company, a corporation, and publisher of the newspaper entitled THE MOOREFIELD EXAMINER, a Democratic newspaper; that I have been duly authorized by the Board of Directors of such corporation to execute all affidavits of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published twice weekly on Wednesdays and Saturdays, for at least fifty weeks during a calendar year, in the municipality of Moorefield, Hardy County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, that the annexed

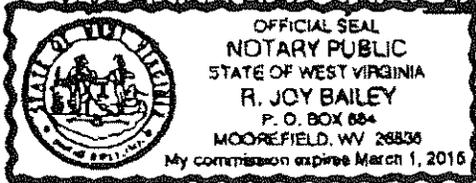
notice of Amended Notice of Filing - Case No. 05-1004-PSD-CN

was duly published in said newspaper once a week for 1 successive weeks, commencing with the issue of 20 day of July 20 05, and ending with the issue of the 20 day of July 20 05, (and was posted at the n/a on the _____ day of _____, 20 _____.

/s/ Phoebe Fisher Heishman
Phoebe Fisher Heishman, Publisher
The Moorefield Examiner

Taken, subscribed and sworn to before me in my said county this 20th day of July, 2005.

My commission expires March 1, 2015



/s/ R. Joy Bailey
Notary Public of Hardy County, WV

RATE (Based on measured amount of water used)

First 3,000 gallons used per month \$11.70 per 1,000 gallons
Next 2,000 gallons used per month \$ 7.50 per 1,000 gallons
Next 5,000 gallons used per month \$21.00 per 1,000 gallons
All over 10,000 gallons used per month \$4.80 per 1,000 gallons

MINIMUM CHARGE

No bill shall be rendered for less than \$35.10 per month.

DELAYED PAYMENT PENALTY

The above bill is net. Any account not paid in full within twenty (20) days of the latest pay date, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected only once for each bill where it is appropriate.

CUSTOMER SERVICE CONNECTION FEE

A tapping fee of One Hundred and Fifty Dollars (\$150.00) shall be charged for connecting a customer to the system.

These rates represent the following project-related increases:

	(%) INCREASE	(%) INCREASE
Residential	\$29.25	600%

The proposed increased rates and charges will produce approximately \$45,442.80 annually in additional revenue, an increase of 600%.

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increase or decrease) by the Public Service Commission in its review of this filing.

Pursuant to §24-2-11, West Virginia Code, IT IS ORDERED that the Hardy County Public Service District give notice of the filing of said application by publishing a copy of this order once in a newspaper duly qualified by the Secretary of State, published and of general circulation in Hardy County, making due return to this Commission of proper certification of publication immediately after publication. Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest or intervene in this case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules of intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Harding Bowers, Executive Secretary, P.O. Box 812, Charleston, West Virginia, 25320.

IT IS FURTHER ORDERED that if no protests are received within said thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and by review thereof.

FOR THE COMMISSION:

Sandra Squire
Executive Secretary

7/20 1c

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11th day of July, 2006.

CASE NO. 05-1004-PSD-CN

HARDY COUNTY PUBLIC SERVICE DISTRICT

223 North Main Street, Suite 102

Post Office Box 208

Martinsburg, WV 26156

Application for a certificate of convenience and necessity to construct a sewer lift station and force main to transfer all wastewater flows from the Caladonia Heights Subdivision to the Town of Martinsburg for treatment and disposal.

ASSIGNED NOTICE OF FILING

WHEREAS, on July 8, 2006, Hardy County Public Service District filed an application duly verified for a Certificate to construct improvements to the wastewater system that serves the Caladonia Heights Subdivision, Martinsburg, West Virginia. The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West Virginia.

WHEREAS, the Hardy County Public Service District (District) estimates that construction will cost approximately Three Hundred Fifty-Six Thousand Three Hundred and

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

MINUTES ON ELECTION OF OFFICERS FOR YEAR 2009,
ADOPTION OF BOND RESOLUTION, SUPPLEMENTAL RESOLUTION,
SWEEP RESOLUTION AND FIRST DRAW RESOLUTION

The undersigned Secretary of the Public Service Board of Hardy County Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of the said Public Service Board:

The Public Service Board of Hardy County Public Service District met in special session, pursuant to notice duly given, on the 25th day of February, 2009, at Moorefield, West Virginia, at the hour of 11:00 a.m.

PRESENT: Matthew Gapp
Melvin Shook, Jr.
Clyde See, Jr.

ABSENT: None

Matthew Gapp, acted as Chairman, presided, and Logan Moyers, 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, following nomination and vote for each office, the following members were elected to the following offices for the 2009 calendar year:

Matthew Gapp	-	Chairman
Connie Sherman	-	Secretary

Next, the Chairman presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF HARDY COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$608,000 IN AGGREGATE PRINCIPAL

AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion duly made by Clyde See, Jr. and seconded by Melvin Shook, Jr., it was unanimously ordered that the said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairman presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA INFRASTRUCTURE FUND), OF HARDY COUNTY PUBLIC SERVICE DISTRICT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO THE BONDS; AUTHORIZING AND APPROVING THE SALE OF THE BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, on motion duly made by Clyde See, Jr. and seconded by Melvin Shook, Jr., it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairman presented a proposed Sweep Resolution for the authorization of electronic monthly debt service and reserve fund payments to the Municipal Bond Commission. Thereupon, on motion duly made by Melvin Shook, Jr. and seconded by Clyde See, Jr., it was unanimously ordered that the said Sweep Resolution be adopted.

Next, the Chairman presented a proposed Draw Resolution for the approval of invoices. Thereupon, on motion duly made by Clyde See, Jr. and seconded by Melvin Shook, Jr., it was unanimously ordered that the said Draw Resolution be adopted.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

CERTIFICATION

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

WITNESS my signature on this 3rd day of March, 2009.

Connie E. Sherman
Secretary

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

MINUTES ON ELECTION OF OFFICERS FOR YEAR 2009,
ADOPTION OF BOND RESOLUTION, SUPPLEMENTAL RESOLUTION,
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THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF
NOT MORE THAN \$608,000 IN AGGREGATE PRINCIPAL

AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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CERTIFICATION

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

WITNESS my signature on this 3rd day of March, 2009.

Connie E. Sherman
Secretary

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

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

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

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

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

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

HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Pendleton Community Bank, Moorefield, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution and a Supplemental Resolution of Hardy County Public Service District (the "Issuer"), both adopted February 25, 2009 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), dated March 3, 2009, issued in the principal amount of \$608,000 (the "Bonds"), as set forth in the Bond Legislation.

WITNESS my signature on this 3rd day of March, 2009.

PENDLETON COMMUNITY BANK

By: Sheldon W. Orbaugh, VP
Its: Authorized Officer

HARDY COUNTY PUBLIC SERVICE DISTRICT

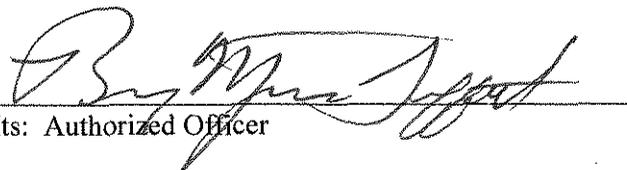
Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

ACCEPTANCE OF DUTIES AS REGISTRAR

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Hardy County Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), dated March 3, 2009, issued in the principal amount of \$608,000 (the "Bonds"), and agrees to perform all duties of Registrar in connection with such Bonds, as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 3rd day of March, 2009.

HUNTINGTON NATIONAL BANK

By: 
Its: Authorized Officer

HARDY COUNTY PUBLIC SERVICE DISTRICT

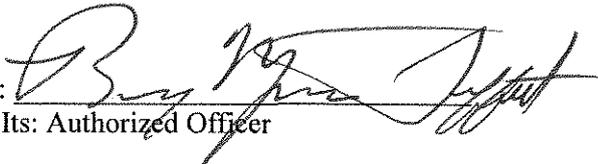
Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

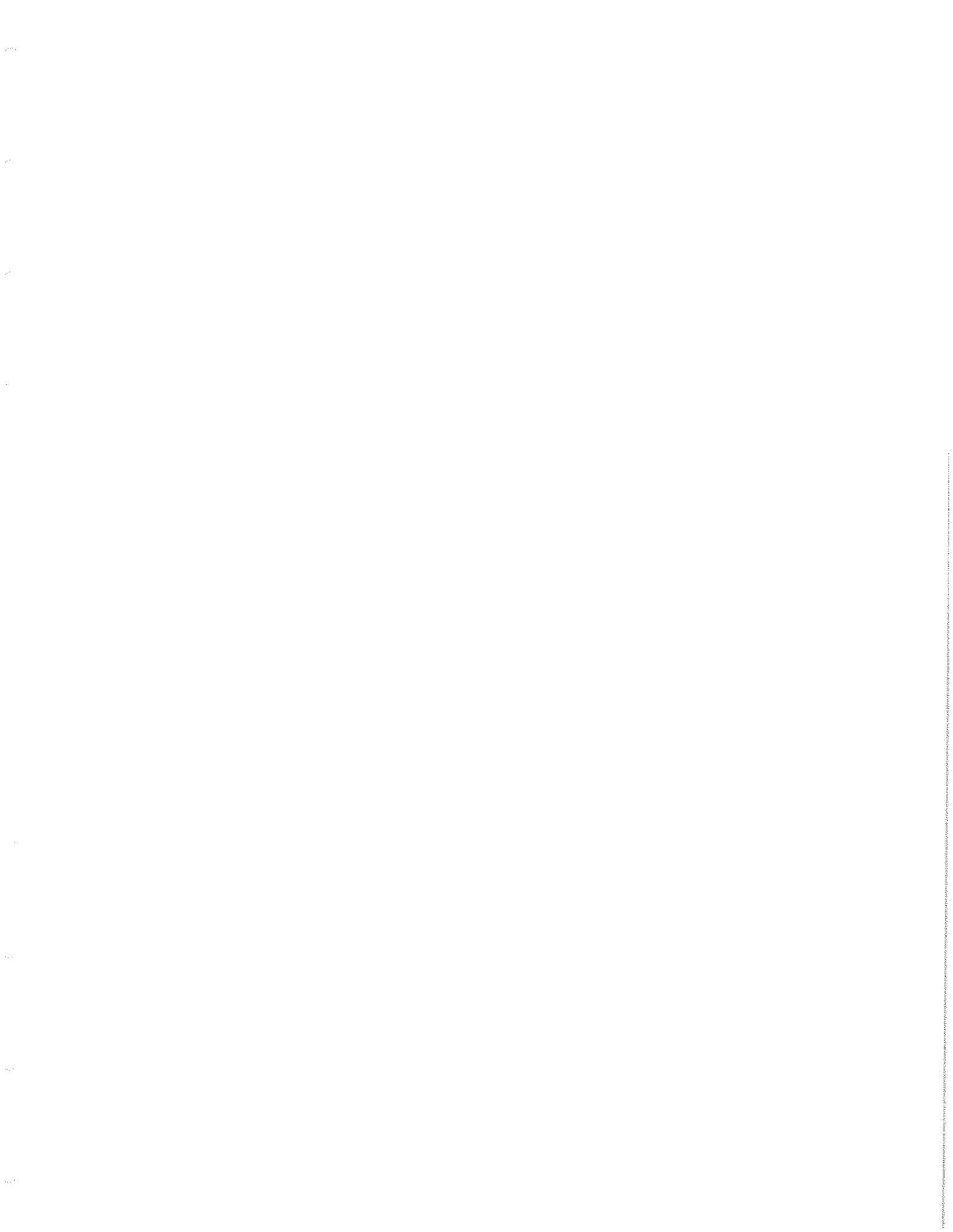
CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of Hardy County Public Service District (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Hardy County Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), of the Issuer, dated March 3, 2009, in the principal amount of \$608,000, numbered AR-1, is registered as to principal only in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 3rd day of March, 2009.

THE HUNTINGTON NATIONAL BANK

By: 
Its: Authorized Officer



HARDY COUNTY PUBLIC SERVICE DISTRICT

Sewer Revenue Bonds, Series 2009 A
(West Virginia Infrastructure Fund)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 3rd day of March, 2009, by and between the HARDY COUNTY PUBLIC SERVICE DISTRICT, a public service district and public corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$608,000 Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), in fully registered form (the "Series 2009 A Bonds"), pursuant to a Bond Resolution of the Issuer duly adopted February 25, 2009, and a Supplemental Resolution of the Issuer duly adopted February 25, 2009 (collectively, the "Bond Legislation");

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

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

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

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

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon

original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

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

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

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

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

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

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

ISSUER: Hardy County Public Service District
Post Office Box 900
Moorefield, West Virginia 26836
Attention: Chairman

REGISTRAR: The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

HARDY COUNTY PUBLIC SERVICE DISTRICT

By: Matthew B. B. B.
Its: Chairman

THE HUNTINGTON NATIONAL BANK

By: [Signature]
Its: Authorized Officer

02.20.09
378080.00005

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See attached)

Private Financial Group
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633



STATEMENT OF REGISTRAR'S FEES
Invoice Date March 3, 2009

Hardy County Public Service District
Account Number 6089001809

Hardy County Public Service District
Sewer Revenue Bond, Series 2009 A
C/o John C. Stump
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

FEE CALCULATION FOR March, 2009

TOTAL AMOUNT	\$	500.00
TOTAL DUE	\$	<u>500.00</u>

- * FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT *
- * IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN *
- * .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: BARRY. . *
- * .. GRIFFITH, PO BOX 633, CHARLESTON, WV 25322-0633 *

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT
Barry Morgan Griffith at (304)348-5035

20-77.9
permit file

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL and WASHINGTON STREETS

1 DAVIS SQUARE, SUITE 200
TELEPHONE 304-558-2981

CHARLESTON, WEST VIRGINIA 25301

Clay
give Phil's

RECEIVED

APR 28 2008

PERMIT

PROJECT: (Sewer) Caledonia Heights Sewer Line Extension **THRASHER ENGINEERING, INC. PERMIT NO.:** 17,954
LOCATION: Moorefield **COUNTY:** Hardy **DATE:** 4-18-2008

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Hardy County Public Service District
Post Office Box 900
Moorefield, West Virginia 26836**

is hereby granted approval to: install approximately 3,406 LF of 12" sewer line and necessary manholes and cleanouts.

Facilities are to serve approximately 100 customers in the Caledonia Heights Subdivision and surrounding environs.

NOTE: This permit is contingent upon maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum 18" vertical separation between crossing sewer and water lines, with the water line to be installed above the sewer line.

The Environmental Engineering Division of the OEHS-Kearneysville District Office, telephone (304) 725-9453, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

William S. Herold, Jr.
William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

RECEIVED
2008 JUN 16 AM 9 12
W.V. PUBLIC SERVICE
COMMISSION
DISTRICT OFFICE

WSH:emt
pc: Thrasher Engineering, Inc.
Katheryn Emery, P.E., DEP
James W. Ellars, P.E., PSC-Engineering Division
Amy Swann, PSC
Hardy County Health Department
OEHS-EED Kearneysville District Office

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/25/2009

PRODUCER (304)375-4900 FAX (304)375-2162
 Bill Bailey Insurance Agency
 701 Highland Avenue
 P. O. Box 246
 Williamstown, WV 26187

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Hardy County PSD
 P.O. Box 900
 Moorefield, WV 26836

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A. American Alternative Insurance	
INSURER B.	
INSURER C.	
INSURER D.	
INSURER E.	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC.	SP9153825-01	02/07/2009	02/07/2010	EACH OCCURRENCE	\$ 1,000,000
		DAMAGE TO RENTED PREMISES (Per occurrence)				\$ 100,000	
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 3,000,000
						GENERAL AGGREGATE	\$ 3,000,000
						PRODUCTS - COMP OP AGG	\$ 3,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Per accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY EA ACC	\$
						AGG	\$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	SX9251344-01	02/07/2009	02/07/2010	EACH OCCURRENCE	\$ 1,000,000
		AGGREGATE				\$ 1,000,000	
						1000000	\$ 1,000,000
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR PARTNER EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTHER
						E L EACH ACCIDENT	\$
						E L DISEASE - EA EMPLOYEE	\$
						E L DISEASE - POLICY LIMIT	\$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Certificate holder listed below is named as Additional Insured in regards to policy # SP9153825-01

CERTIFICATE HOLDER
 WV Water Development Authority
 180 Association Drive
 Charleston, WV 25311-1217

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE: *Renald Shonwell*

CLOSING MEMORANDUM

To: Financing Team
From: John C. Stump, Esquire
Date: March 3, 2009
Re: Hardy County Public Service District, Sewer Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund)

1. DISBURSEMENTS TO HARDY COUNTY PUBLIC SERVICE DISTRICT

Payor: West Virginia Infrastructure and Jobs Development Council
Source: Series 2009 A Bonds Proceeds
Amount: \$ 106,980
Form: Wire
Payee: Hardy County Public Service District
ABA No: 0515042541
Account No: 431818
Bank: Pendleton Community Bank
Contact: Sheldon Arbaugh 304.538.7900
Account: Series 2009 A Bonds Project Fund

2. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

Payor: West Virginia Infrastructure and Jobs Development Council
Source: Series 2009 A Bonds Proceeds
Amount: \$ 15,396
Form: Wire
Payee: Hardy County Public Service District
ABA No: 051503394
Account No: 5270517317
Bank: BB&T for the benefit of Municipal Bond Commission
Contact: Sara Boardman
Account: Series 2009 A Bonds Reserve Account

State of West Virginia
WATER DEVELOPMENT AUTHORITY
 180 Association Drive, Charleston, WV 25311-1217
 (304) 558-3612 - (304) 558-0299 (Fax)
 Internet: www.wvwda.org - Email: contact@wvwda.org

CLOSING ATTENDANCE LIST

Date March 3, 2009 Time 10:00 a.m. LGA Hardy County PSD Program IJDC

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
John Stump	Stetson Johnson PLLC	304.353.8196	304.353.8181	john.stump@stetson-job
Diane Roy	WV Water Develop. Authority	304-558-3612	304-558-0299	droy@wvwda.org
Samuel Lee	Jackson Kelly PLLC	304.340.1318	304.340.1274	sglee@jacksonkelly

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Logan Moyers, Manager Telephone 304.530.3048 E-Mail lmoyers@hardynet.com
 Address P.O. Box 900 Moorefield WV 26836

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

Hardy County Public Service District

Requisition No.1

RESOLUTION OF THE HARDY COUNTY PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO PRE-CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED WASTEWATER PROJECT AND AUTHORIZING PAYMENT THEREOF,

WHEREAS, the Hardy County Public Service District has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Caledonia Wastewater Construction Project funded by the West Virginia Infrastructure & Jobs Development Council (IJDC) and find as follows:

- a) That none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made.
- b) That each item for which the payment is proposed to be paid is or was necessary in connection with the Project and constitutes a Cost of the project.
- c) That each of such costs has been otherwise properly incurred.
- d) That the payment for each of the items proposed is due and owing.

Vendor	Total	IJDC
Tom Michael	6,718.18	6,718.18
Thrasher Engineering	79,700.00	79,700.00
Huntington Bank	500.00	500.00
Steptoe & Johnson	15,000.00	15,000.00
WV Municipal Bond Commission (Reserve Account)	15,396.00	15,396.00
Hardy County PSD	5,061.15	5,061.15
TOTAL	122,375.33	122,375.33

ROUND TO 122,376.00

NOW, THEREFOR, BE IT RESOLVED The Hardy County Public service District by as follows: There is hereby authorized and directed the payment of the attached invoices listed above:

ADOPTED BY the Hardy County Public Service District, at the meeting held on the 25th day of February, 2009

By: Matthew H. Capp
Its: Chairman

SWEEP RESOLUTION

Hardy County Public Service District

WHEREAS, the Hardy County Public Service District (the "Issuer") is a governmental body and political subdivision of West Virginia;

WHEREAS, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

WHEREAS, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

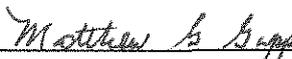
WHEREAS, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

WHEREAS, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

- 1) The monthly debt service payments on and reserve funds for the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A, to the extent funds are available, in such form and at such directions as are provided by the MBC.
- 2) The Chairman, Secretary and Treasurer are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.
- 3) This resolution shall be effective immediately upon adoption.

Adopted this 25th day of February, 2009.



Chairman

THIS AGREEMENT, made and entered into this 17th day of February, 2009, by and between the TOWN OF MOOREFIELD, a municipal corporation, hereinafter called "TOWN", party of the first part, and the HARDY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia, hereinafter called "DISTRICT", party of the second part.

WITNESSETH, THAT, WHEREAS, an agreement for the treatment of sewage from the DISTRICT'S customers in Caledonia Heights is now pending approval by the Public Service Commission in Case No. 08-1028-PSD-C; and

WHEREAS, the issues in said pending case relate to 1) the transportation fee to be charged by the DISTRICT for transporting flows from the TOWN'S customers, including the Hardy County Board of Education, and 2) whether or not the proposed Elizabeth Station subdivision will be a customer of the TOWN or the DISTRICT; and

WHEREAS, neither of said pending issues affects the agreement between the parties that the TOWN will treat the flows from Caledonia Heights; and

WHEREAS, the DISTRICT desires to close on the Caledonia Heights funding and commence construction and needs a treatment agreement with the TOWN; and

WHEREAS, the parties desire to enter into this Agreement for treatment of flows from Caledonia Heights, and will modify this Agreement with the appropriate Addenda upon resolution of the aforesaid outstanding issues by the Public Service Commission.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained the parties hereto covenant and agree to and with each other as follows:

1 TOWN covenants and agrees that it will accept into its INTERCEPTOR SEWER system

sewage from the DISTRICT collected from Caledonia Heights Subdivision. The point of connection to the INTERCEPTOR SEWER will be on the east side of US Rt. 220 in front of Markwood Dodge. The maximum treatment capacity that the TOWN can accept from Caledonia Heights is 50,000 gallons per day and a 30 day average not to exceed 25,000 gallons per day. If the DISTRICT requests additional treatment capacity, the parties will meet to renegotiate this agreement and the TOWN will verify that the additional treatment capacity is available.

- 2 DISTRICT covenants and agrees to pay to TOWN, payable on a monthly basis, for such right and privilege, and for the services performed in connection with the transporting and treatment of sewage from the DISTRICT and the maintenance of the INTERCEPTOR SEWER system and sewage WWTP, in accordance with the following schedule of rates:

\$3.84 per 1000 gallons.

Gallons shall be based on the bulk metered flow at the point of connection to the INTERCEPTOR SEWER.

- 3 The above tariff is net, that is, there are no other charges, payments, assessments or fees for transportation and treatment by the TOWN of the DISTRICT's sewage, other than the above tariff rate. For any account not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the amount due. This delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.
- 4 The TOWN shall, at its sole cost and expense, cause to be installed a master sewer flow meter, and other required devices or equipment, of such specifications, design, and capacity as must be approved in advance by the DISTRICT, to measure the quantity of such sanitary

sewage flow. Said master meter shall be operated and maintained by the TOWN. The flow meter and other required devices or equipment, when fully installed by the TOWN and accepted in writing by the DISTRICT, shall be and become the sole property of TOWN, and will be operated and maintained by TOWN. The TOWN shall read the flow meter at least monthly and shall provide to the DISTRICT a copy of any meter readings upon request of the DISTRICT. An appropriate official of the DISTRICT shall have access to the flow meter at any reasonable time, in the presence of a TOWN employee, for the purpose of verifying its readings. The master flow meter will mark a change in operations and maintenance (O&M) responsibilities, with the DISTRICT being responsible for O&M from Caledonia Heights to the master meter, and the TOWN being responsible for O&M from the master meter to the connection with the INTERCEPTOR SEWER. The master flow meter will also mark a change in service area, so that new customers connecting below the flow meter will be customers of the TOWN.

- 5 The location of the master flow meter will be on the existing Caledonia Heights main line between the Caledonia Heights subdivision and the new main line.
- 6 A second flow meter will be installed to measure the flows from the Middle School and Intermediate School. This meter will be installed and maintained at the TOWN's expense. The Middle School and Intermediate School will remain a customer of the TOWN, the metered flows from the Middle School and Intermediate School will be deducted from the flows measured at the Caledonia Heights meter for purposes of billing the DISTRICT, and the DISTRICT will charge a fee to the TOWN for transmission of the metered flows from the Middle School and Intermediate School at the rate to be determined by the Public Service

Commission in Case No. 08-1028-PSD-C. This Agreement will be supplemented by an Addendum stating the approved transportation fee.

7 This Agreement will also be supplemented by an Addendum if necessary to reflect the decision of the Public Service Commission regarding which utility will serve the proposed Elizabeth Station subdivision.

8 The DISTRICT further covenants and agrees that it will take every reasonable effort in the future to separate storm and surface drainage from sanitary sewage where practicable. The DISTRICT will contact residents of Caledonia Heights Subdivision to disconnect any storm drains, foundation drains, basement drains, etc. DISTRICT will work to enforce said disconnections in order to avoid inflow and infiltration.

9 The TOWN covenants and agrees that, in the event of a substantial increase in the operation costs of the WWTP which requires the TOWN to seek a higher sewer service rate, then thirty (30) days prior written notice thereof shall be given to the DISTRICT. Nothing herein shall prevent the DISTRICT from protesting any such rate increase.

10 The DISTRICT covenants and agrees to take all precautions to prevent harmful materials from entering the INTERCEPTOR SEWER, and will be responsible for any damage caused to the TOWN which can be directly attributed to the DISTRICT by flow records from the master meter, sampling, and any other detection methods for identifying harmful substances.

11 The DISTRICT agrees to indemnify, defend, and hold harmless TOWN, its officials, officers, agents, and employees, from and against any and all claims, liabilities, or obligations of any kind or character from any and all losses, injuries, demands, causes of action, fines, penalties, expenses, suits, costs, and damages whatsoever, including reasonable

attorney fees and Court costs, to any person or persons or property resulting from or arising out of or connected with the rendering of services hereunder, to the full extent that such claims, liabilities, or obligations of any kind or character are caused by, result from, arise out of, or are connected with the negligent or intentional acts, conduct, or omissions of the DISTRICT, or any material breach, default, or violation by the DISTRICT of any of the terms, covenants, agreements, and provisions contained in this Agreement.

12 TOWN, agrees to indemnify, defend, and hold harmless the DISTRICT, its officials, officers, agents, and employees, from and against any and all claims, liabilities, or obligations of any kind or character from any and all losses, injuries, demands, causes of action, fines, penalties, expenses, suits, costs, and damages whatsoever, including reasonable attorney fees and Court costs, to any person or persons or property resulting from or arising out of or connected with the rendering of services hereunder, but only to the extent that such claims, liabilities, or obligations of any kind or character are caused by, result from, arise out of, or are connected with the negligent or intentional acts, conduct, or omissions of TOWN, or any material breach, default, or violation by TOWN of any of the terms, covenants, agreements, and provisions contained in this Agreement. Provided, that the DISTRICT understands that the TOWN cannot hold the DISTRICT harmless if any pump station is overwhelmed by excessive inflow and infiltration.

13 The above rates are subject to the laws of the State of West Virginia and the regulations of the Public Service Commission of West Virginia.

14 The DISTRICT shall not assign this contract in whole or in part without first obtaining the written permission from the TOWN so to do; provided, however, that the TOWN does

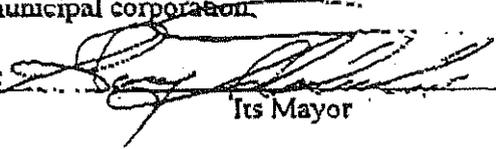
owning and holding any bonds issued by the DISTRICT, should default occur in the payment of any indebtedness incurred by the DISTRICT with any organization, firm, corporation, or agency in the construction of said sewer system; provided, further, however, that in the event of any occurrence rendering the DISTRICT incapable of performing under this contract, any successor of the DISTRICT, whether the result of legal process, assignment, or otherwise, shall succeed to the rights, duties and obligations of the DISTRICT hereunder.

- 15 The term of this agreement shall be 40 years from the date it is approved by the Public Service Commission of West Virginia, or for such period as any indebtedness incurred by the DISTRICT to construct improvements or extensions to its sewer system and guaranteed or underwritten by any other governmental agency remains unpaid.

IN WITNESS WHEREOF, the TOWN OF MOOREFIELD, a municipal corporation, and the HARDY COUNTY PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia, have caused these presents to be signed and their seals affixed by their proper officers thereunto duly authorized, on this 17th day of February, 2009.

TOWN OF MOOREFIELD.

a municipal corporation

By: 

Its Mayor

HARDY COUNTY PUBLIC SERVICE DISTRICT.

a public corporation and political subdivision of the State of West Virginia

By: 

Its Chairman

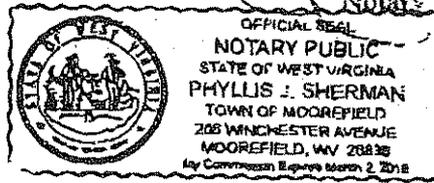
STATE OF WEST VIRGINIA
COUNTY OF HARDY, to-wit:

The foregoing instrument was acknowledged before me this 17th day of
February, 2009, by Gary Stalinski Mayor of
the TOWN of MOOREFIELD, municipal corporation, on behalf of said
corporation.

[Signature]
Notary Public

My commission expires:

3-2-18



STATE OF WEST VIRGINIA
COUNTY OF HARDY, to-wit:

The foregoing instrument was acknowledged before me this 17th day of
February, 2009, by Matthew G. Capp Chairman of
the HARDY COUNTY PUBLIC SERVICE DISTRICT, a public corporation, on behalf of said
corporation.

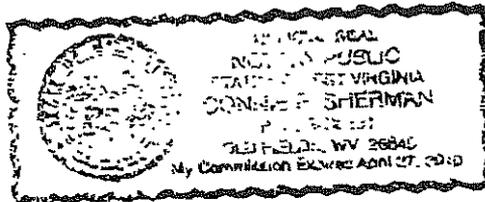
[Signature]
Notary Public

My commission expires:

April 27 2010

THIS INSTRUMENT WAS PREPARED BY

Thomas R. Mishak, WV Bar #2006
P.O. Box 250
Lost Creek, WV 26035
Phone #252-5914



0810280001028001.P

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 9th day of February, 2009.

CASE NO. 05-1004-PSD-CN (Reopened)

HARDY COUNTY PUBLIC SERVICE DISTRICT, a public utility,
Moorefield, Hardy County.

Application for a certificate of convenience and necessity to construct a sewage lift station and force main to transfer all wastewater from the Caledonia Heights Subdivision to the Town of Moorefield for treatment and disposal.

CASE NO. 08-1028-PSD-C

TOWN OF MOOREFIELD
Moorefield, Hardy County,

Complainant,

v.

HARDY COUNTY PUBLIC SERVICE DISTRICT, a public utility,
and HARDY COUNTY BOARD OF EDUCATION, both located
in Moorefield, Hardy County.

Defendants.

COMMISSION ORDER

The Commission grants its prior consent for two utilities to enter into an agreement for sewage treatment services.

BACKGROUND

Hardy Co. PSD Certificate Project, Case No. 05-1004-PSD-CN

On February 19, 2006, Hardy County Public Service District was granted a certificate of public convenience and necessity to undertake a \$355,000 project to improve the wastewater system at the Caledonia Heights subdivision near Moorefield and transport the wastewater to the Town of Moorefield for treatment. The Commission also approved project financing and increased customer rates. Rec. Dec. Pp. 16-17 Jan. 30, 2006, final Feb. 19, 2006. The decision was contingent upon, among other things, Commission approval of an agreed treatment services contract between Hardy County and Moorefield that included the detailed location of the tie in between the Caledonia Heights and Moorefield systems, the estimated flow rate by Hardy County, the master meter location, and the bulk rate. *Id.* p. 16.

On June 13, 2008, Hardy County petitioned to reopen the certificate case because the project cost had increased to \$608,000. Hardy County proposed to borrow more money, but at a significantly lower interest rate so that rates would not need to be increased. The additional funding also would allow Hardy County to work on the inflow and infiltration problems on the Caledonia Heights system. Furthermore, the interconnection point was moved so that the sewage flow could reach Moorefield through gravity lines, eliminating the proposed pump station. Hardy County also asked the Commission to approve a treatment contract with Moorefield, approve an alternate main extension agreement with the Hardy County Board of Education, and determine whether Moorefield or Hardy County should serve an intermediate school under construction. Petition to reopen pp. 1-4.

Moorefield formal complaint, Case No. 08-1028-PSD-C

On June 18, 2008, Moorefield filed a formal complaint alleging that Hardy County was improperly attempting to serve the new intermediate school in Moorefield's service territory.

Consolidated proceedings

On September 8, 2008, the Commission reopened the certificate case, consolidated it with the formal complaint case, and referred the consolidated matters to the Division of Administrative Law Judges for further processing. Comm'n Referral Order p. 4.

At the conclusion of a hearing conducted on November 6, 2008, Hardy County moved to bifurcate the cases, arguing that all issues related to the territorial dispute could be resolved in the complaint case and that a prompt order should be issued in the certificate proceeding so that Hardy County could work to correct the problems on the Caledonia

Heights system. All parties concurred, and the ALJ granted the motion in accordance with Procedural Order p. 2 (Nov. 10, 2008).

Hardy Co. PSD Certificate Project, Case No. 05-1004-PSD-CN

On December 10, 2008, the Commission approved the proposed changes in the certificate project, as well as the revised financing. Rec. Dec. pp. 3-4, Hardy Co. PSD, Case No. 05-1004-PSD-CN (Nov. 19, 2008, final Dec. 10, 2008). The Commission left several issues to be resolved in the formal complaint case: the treatment services agreement, the alternate main extension agreement, and which utility would serve the new school. Id.

Moorefield formal complaint, Case No. 08-1028-PSD-C

On December 23, 2008, the ALJ noted that all parties agreed that Moorefield should serve the intermediate school, although for varying reasons, and concluded that the proposed alternate main extension agreement between Hardy County and the school board was moot. Rec. Dec. pp. 3 & 6 (Dec. 23, 2008). The ALJ also concluded that Hardy County should charge Moorefield \$0.29 per thousand gallons¹ when Hardy County transports wastewater from Moorefield's customers to Moorefield's system for treatment. Id.

The ALJ also concluded that the treatment contract between Moorefield and Hardy County should be approved, with amendments to reflect that Moorefield would serve the intermediate school and that the transportation rate would be \$0.29 per thousand gallons. Rec. Dec. pp. 4 & 6.

On January 5, 2009, Moorefield filed exceptions, advising that after the hearing Moorefield was asked to annex the Elizabeth Station subdivision and provide sewer service to it. Exceptions p. 1. Under the proposed treatment agreement, Hardy County will serve the initial phase of Elizabeth Station, and, thus, Moorefield asked the treatment agreement to be amended to reflect that Moorefield will serve the initial phase of Elizabeth Station. Tr. Utility Ex. 13 (Nov. 6, 2008).

On January 6, 2009, Hardy County filed exceptions, requesting a transportation rate comprised of the \$1.90 Staff recommendation, plus \$0.14 for allocated debt expense. Exceptions p. 1. Hardy County also asked the Commission to conclude decision in this case

¹ Three different rates had been proposed: \$0.14 per thousand gallons by Hardy County; \$1,000 a year, which equates to about \$0.29 per thousand gallons by Moorefield; and \$1.90 per thousand gallons by Commission Staff. Rec. Dec. p. 3. The ALJ noted that the initial charge likely would be in effect for a short time because Hardy County was required to file a rate case no later than two years after the certificate project begins providing service. Id.

does not preclude future customers in this overlapping authority area from selecting Hardy County as their sewer service provider. Id. p. 2.

On January 15, 2009, Staff responded to the exceptions, arguing that the Commission should adopt Staff's \$1.90 transportation rate, but not the additional \$0.14 because operation and maintenance expenses were not listed in Hardy County's 2007 or 2008 annual reports. Response p. 3, as corrected Jan. 21, 2009. Staff stated that Hardy County and Moorefield have overlapping authority to provide sewer service in the area and when there is overlapping authority, the Commission allows the customer to select the utility provider. Id., citing Comm'n Order pp. 5-6, Harrison R.E. Assoc. v. Public Serv. Comm'n, Case No. 04-1937-E-C (June 9, 2008).

Although the school board signed an alternate main extension agreement for Hardy County to serve the intermediate school, the school board recently applied to Moorefield for service instead, and the school board may choose its sewer provider under Commission policy. Response pp. 3-4. Staff recommended adding a statement to the Recommended Decision that the Commission policy is to allow a customer to choose its utility provider in an area with overlapping authority.

Staff did not support Moorefield's request to amend the treatment contract to state that Moorefield will serve the Elizabeth Station subdivision. Response p. 4. Staff noted that Hardy County has 77 customers in the Caledonia Heights subdivision, and recently a potential customer, the school board, requested service from Moorefield. The developer of Elizabeth Station is not a party to this case and has not yet filed anything reflecting its choice of utility provider. Id. Moreover, the annexation of Elizabeth Station by Moorefield has not been completed. Staff advised that the expectation that Hardy County would serve Elizabeth Station was an important part of the treatment agreement between Moorefield and Hardy County. Id. Staff advised that if service to Elizabeth Station is to be considered at all, this case must be remanded. Id. pp. 4-5.

On January 16, 2009, Hardy County responded, arguing that Moorefield raised a new issue when Moorefield stated that it "no longer agrees that Elizabeth Station will be a customer of the District." Response p. 1. Hardy County asserted that after Elizabeth Station is annexed, Moorefield will entirely surround Caledonia Heights and that Hardy County's new sewer main apparently will allow the subdivision to take advantage of Moorefield's lower rates. Id. Hardy County argued that without Caledonia Heights residents paying for the new line, Moorefield would not be able to serve Elizabeth Station, the intermediate school or others in the vicinity. Response pp. 1-2. Hardy County asserted that Moorefield required Hardy County to work on the inflow and infiltration problems at Caledonia Heights, as part of the treatment agreement. Hardy County agreed to do so with the understanding that it would have the revenues from Elizabeth Station and the intermediate school to do so. Id. p. 2. Hardy County asserted that it had been in negotiations with the developer of Elizabeth Station for 18 months. Id. Hardy County asked the Commission to defer ruling on which utility could serve Elizabeth Station. Id. p. 3.

On January 22, 2009, Hardy County filed a motion for expedited relief, asserting that the terms for Moorefield to treat flows from Hardy County customers at Caledonia Heights are entirely separate from the transportation fee to be charged by Hardy County for transporting flows from Moorefield's customers and which utility will serve Elizabeth Station. Motion p. 1. Hardy County has opened bids for its certificate project and obtained the necessary easements, but Hardy County needs an approved treatment agreement in place to be able to close on the project funding and commence construction. Id. To expedite the Caledonia Heights certificate project, Hardy County and Moorefield have negotiated a revised treatment agreement. See attachment to Motion. Hardy County was authorized to represent that Moorefield did not oppose its motion. Motion p. 2.

Pursuant to the revised contract, Moorefield agrees to accept flows from Caledonia Heights and the interconnection point will be on the east side of U.S. Rt. 220 in front of Markwood Ridge. Hardy County agrees to pay Moorefield each month \$3.84 per thousand gallons to transport and treat the Hardy County flows, based on metered flows at the interconnection point. Revised contract p. 2. Moorefield shall install and operate, at its sole expense, the master flow meter. Id. Hardy County will be responsible for operation and maintenance from Caledonia Heights to the master flow meter, and Moorefield will be responsible for operation and maintenance on the other side of the meter. Id. p. 3. The master flow meter will be located on the existing Caledonia Heights main line, between the Caledonia Heights subdivision and the new main line. A second flow meter, also to be installed and maintained at Moorefield's sole expense, will measure the flows from the middle and intermediate schools. The flows from the schools (because they are Moorefield customers) will be deducted from the Caledonia Heights master flow meter when Hardy County is billed.

Hardy County will charge Moorefield a fee to transport the flows from the schools, but the transportation rate will be determined by the Public Service Commission in Case Number 08-1028-PSD-C. The revised treatment contract will later be supplemented by an addendum that states the transportation fee. Revised contract p. 3. Hardy County and Moorefield also agreed that the contract would later be supplemented to reflect which utility will serve Elizabeth Station. Id.

In the indemnity provisions of the revised treatment agreement, Hardy County acknowledges that Moorefield cannot hold Hardy County harmless "if the pump station is overwhelmed by excessive inflow and infiltration." Revised contract p. 5.

On February 5, 2009, Commission Staff recommended that the Commission grant the motion for expedited interim relief, so long as Hardy County and Moorefield file a revised agreement "containing the entire agreement including the information about Elizabeth Station, the treatment rate and the three additional items recommended by Staff" after the Commission rules on the pending exceptions. Staff Response p. 2.

BECAUSE THE ORIGINAL CONTRACT STATES THAT THE REGIONAL TREATMENT PLANT WILL NOT BE BUILT UNTIL 2010, accept the Elizabeth Station flows at full build out until a new regional treatment plant was built, Technical Staff was concerned that the contract did not state the maximum treatment capacity that Moorefield can accept. Interim Internal Memorandum p. 2, attached to Staff's Response to Motion for Expedited Relief. Because all parties agreed that inflow and infiltration on the Caledonia Heights system was a major concern, Staff suggested that the revised contract contain a time line for remedial work. Id. Under the revised contract, Hardy County agrees to be responsible if harmful materials enter Moorefield's system, as determined by the meter flow meter records, but Staff asserted that the master flow meter records would not be reliable to determine what materials enter Moorefield's system.

Technical Staff proposed, therefore, these changes to the revised contract:

- 1) Revise Paragraph 1 to state
 - a) the maximum treatment capacity that Moorefield can accept from Caledonia Heights, and
 - b) if Hardy County requests additional treatment capacity, the contract must be renegotiated and the availability of additional capacity must be verified.
- 2) Revise Paragraph 8 to include specific time lines for Hardy County to correct the inflow and infiltration problems at Caledonia Heights.
- 3) Revise Paragraph 10 to add appropriate methods to detect harmful materials.

Interim Internal Memorandum pp. 3-4. Staff provided language for each of these proposals.

On February 5, 2009, Hardy County advised that it accepted Staff's recommendation. Response p. 1. By separate letter on February 5, 2009, Hardy County advised that it was authorized to represent that Moorefield also accepted Staff's recommendation. Ltr. p. 1.

DISCUSSION

The Commission appreciates the need to proceed with urgency on the Caledonia Heights certificate project and, upon reflection, understands that consolidation of the formal complaint and the certificate case has complicated, instead of streamlined, case processing. The provisions in the proposed contract that do not relate to treatment of Caledonia Heights flows are extraneous and need not be resolved at this time.

TO CLOSE ON THE CERTIFICATE PROCEEDING, HARDY COUNTY, WEST VIRGINIA
agreement. To that end, the Commission will require Hardy County and Moorefield to file a *further* revised contract within 10 days of the date of this Order. So long as the further revised contract contains only terms relating to the treatment service to be provided for Caledonia Heights and is consistent with this Order, no further action by the Commission will be necessary.

Although Staff suggested that a revised treatment contract be filed after the Commission rules on exceptions in the formal complaint case, the Commission prefers to have all of the final contract terms known when Hardy County closes on its financing.

W. Va. Code § 24-2-12(a) requires a public utility to receive permission from the Commission prior to contracting with another utility. Under the statute, the Commission is authorized to consent to a proposed transaction, without approving of its terms and conditions, if the transaction is reasonable and does not adversely affect the public and neither party is given an undue advantage. The Commission further is authorized to determine if a hearing is necessary.

The Commission agrees with Staff that the contract should be revised to add the maximum treatment capacity that Moorefield can accept from Caledonia Heights and that any request for additional treatment capacity would require further negotiations that would be contingent upon the verification of the availability of additional capacity. Furthermore, master meter flow readings will not reveal the presence of harmful materials and the contract should provide for the appropriate detection of harmful materials. None of these changes will work any harm upon either Moorefield or Hardy County, and we do not expect any objection to such provisions.

Staff also suggested that the further revised contract contain a time line for Hardy County to address the inflow and infiltration problems at the Caledonia Heights system. Although it is reasonable to prepare such a plan, the Commission does not agree that the plan should be part of the agreement between Hardy County and Moorefield. Moorefield does not have any responsibility to oversee Hardy County's operations; such responsibility lies, instead, with the Commission. The Commission shall require Hardy County to file its remediation time line with the Commission and update it at least once a year. The Commission does not wish to have to revisit the treatment contract to review Hardy County's reports and, if necessary, to revise the remediation plan. Within 90 days of the date of this Order, Hardy County shall file its remediation time line in the certificate proceeding, Case Number 05-1004-PSD-CN.

Staff's recommendations contain proposed language for the contract revisions. Because Hardy County and Moorefield have advised that they accept Staff's recommendation, the further revised contract should track the language that Staff proposed for the first and third items.

Finally, Hardy County's petition to reopen focused on the interconnection point being moved so that the sewage flow could reach Moorefield through gravity lines, eliminating the proposed pump station. In the indemnity provisions of the proposed contract, however, Hardy County represents that Moorefield cannot hold Hardy County harmless "if the pump station is overwhelmed by excessive inflow and infiltration." Revised contract p. 5. If a pump station will be involved in Moorefield's treatment of the Caledonia Heights flows, the further revised contract should also be clarified in this respect.

With these revisions, the Commission concludes that the proposed treatment contract is reasonable and does not adversely affect the public and neither party is given an undue advantage. Therefore, the Commission should grant its prior consent for Moorefield and Hardy County to enter into such a treatment contract.

Because there is agreement among the parties, the Commission concludes that a hearing is not necessary.

FINDINGS OF FACT

1. On February 19, 2006, Hardy County was granted a certificate for a project to improve the wastewater system at Caledonia Heights and transport the wastewater to Moorefield for treatment. The Commission also approved project financing and increased customer rates. Rec. Dec. pp. 16-17, Hardy Co. PSD, Case No. 05-1004-PSD-CN (Jan. 30, 2006, final Feb. 19, 2006). The decision was contingent upon, among other things, Commission approval of an agreed treatment services contract between Hardy County and Moorefield. Id. p. 16.

2. On June 13, 2008, Hardy County petitioned to reopen the certificate case because the project cost had increased. Petition to reopen pp. 1-4. Hardy County also proposed to work on the inflow and infiltration problems on the Caledonia Heights system and move the interconnection point so that the sewage flow could reach Moorefield through gravity lines, eliminating the proposed pump station. Furthermore, Hardy County asked the Commission to approve a treatment contract with Moorefield, approve an alternate main extension agreement with the Hardy County Board of Education, and determine whether Moorefield or Hardy County should serve an intermediate school under construction. Id.

3. On January 22, 2009, Hardy County filed a motion for expedited relief, asserting that the terms for Moorefield to treat flows from Hardy County customers at Caledonia Heights can be decided separately from the other issues. Motion p. 1, Moorefield v. Hardy Co. PSD, Case No. 08-1028-PSD-C. Hardy County asserted that it needs an approved treatment agreement in place to be able to close on funding and commence construction of the certificate project. Id. Hardy County and Moorefield negotiated a revised treatment agreement to enable the Commission to proceed expeditiously. See attachment to Motion.

4. On February 5, 2009, Staff recommended that the Commission grant the motion for expedited interim relief, so long as Hardy County and Moorefield file a revised treatment agreement after the Commission rules on the pending exceptions. Staff's Response p. 2. Staff provided specific suggestions to amend the revised treatment contract.

5. On February 5, 2009, Hardy County and Moorefield advised that they accepted Staff's recommendations. Ltr. p. 1.

CONCLUSIONS OF LAW

1. The provisions in the revised contract that do not relate to treatment of Caledonia Heights flows are extraneous and need not be resolved at this time.

2. The final terms of the treatment contract concerning the Caledonia Heights flows should be known when Hardy County closes on its financing.

3. The proposed contract should be further revised to add the maximum treatment capacity that Moorefield can accept from Caledonia Heights and that any request for additional treatment capacity would require further negotiations that would be contingent upon the verification of the availability of additional capacity and to provide for the appropriate detection of harmful materials.

4. The treatment contract between Hardy County and Moorefield should not contain a time line for Hardy County to address the inflow and infiltration problems at Caledonia Heights.

5. The further revised contract should track the language that Staff proposed, except as to the inclusion of a remediation time line.

6. If a pump station will be involved in Moorefield's treatment of the Caledonia Heights flows, the further revised contract should also be clarified in this respect.

7. With the revisions discussed in this Order, the Commission concludes that the proposed treatment contract is reasonable and does not adversely affect the public and neither party is given an undue advantage.

8. Because there is agreement among the parties, the Commission concludes that a hearing is not necessary.

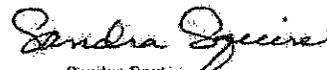
IT IS THEREFORE ORDERED that, pursuant to W. Va. Code § 24-2-12(a), and without approving the underlying terms and conditions, the Commission grants its prior consent for Hardy County and Moorefield to enter into a further revised contract, as is explained above. Hardy County and Moorefield shall file a copy of the further revised contract within 10 days of the date of this Order.

IT IS FURTHER ORDERED that within 90 days of the date of this Order, Hardy County shall file a plan to remediate the inflow and infiltration problems at Caledonia Heights. The plan shall be filed as a closed entry, only in the certificate proceeding, Case Number 05-1004-PSD-CN, and shall be updated at least once a year.

IT IS FURTHER ORDERED that the certificate proceeding, Case Number 05-1004-PSD-CN, is removed from the Commission's docket of active case.

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

A True Copy, Testes:


Sandra Squire
Executive Secretary

CLW/sek
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