HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

Special Meeting of District Board – July 13, 2009, 8.30 a.m.
Pre-Close – July 20, 2009
Close – July 21, 2009

TRANSCRIPT OF PROCEEDINGS

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The closing of this transaction will occur at 8:30 a.m. on July 21, 2009, by telephone, with a pre-closing on July 20, 2009, at the offices of Jackson Kelly PLLC, 500 Lee Street, Suite 1600, Charleston, West Virginia 25301. Unless otherwise clearly required, all documents will be deemed to be delivered and all actions will be deemed to be taken simultaneously at the closing, and no document will be deemed to be delivered and no action will be deemed to be taken unless all documents are delivered and all actions required for the transaction are taken.

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13A OF THE WEST VIRGINIA CODE, AND CHAPTER 16 ARTICLE 13A OF THE 2008 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

July 6, 2009

Natalie E. Tennant

Secretary of State

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

Section

16–13A–1. Legislative findings.
16–13A–1a. Jurisdiction of the public service commission.
16–13A–1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
16–13A–1c. General purpose of districts.
16–13A–2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State.
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16–13A–9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
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16–13A–22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.
16–13A–23. Validation of acts and proceedings of public service boards.
16–13A–24. Acceptance of loans, grants or temporary advances.
16–13A–25. Borrowing and bond issuance; procedure.

§ 16–13A–1. Legislative findings

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been

unable to obtain public utility services. To further this effort, and to insure th all areas of the state are benefiting from the availability of public service distri utility services and to further correct areas with health hazards, the Legislatu concludes that it is in the best interest of the public to implement bett management of public service district resources by expanding the ability ar the authority of the public service commission to assist public service distric by offering advice and assistance in operational, financial and regulato affairs.

In addition to the expanded powers which shall be given to the public servic commission, the Legislature also concludes that it is in the best interest of th public for each county commission to review current technology available an consider consolidating existing public service districts where it is feasible an will not result in the interference with existing bond instruments. Further, such consolidation is not feasible, the Legislature finds that it is in the bes interest of the public for each county commission to review current technolog available and consider consolidating or centralizing the management of publi service districts within its county or multi-county area to achieve efficiency o operations. The Legislature also finds that additional guidelines should b imposed on the creation of new public service districts and that count commissions shall dissolve inactive public service districts as hereinafter pro vided. The Legislature also finds that the public service commission shal promulgate rules and regulations to effectuate the expanded powers given t the commission relating to public service districts.

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

Cross References

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

Administrative Code References

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

Library References

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

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

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1. Validity

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

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

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

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

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

2. In general

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

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

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

3. Construction and application

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

4. Eminent domain powers

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

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

5. Property of public service district

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

6. Rates and charges for service

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

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

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

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

7. Creation and enforcement of liens

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

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

Statute authorizing creation of public servic districts confers upon public service board a thority to create mortgage lien on the propert of public service district, and action of legisl ture conferring such authority was within th legislature's power. Acts 1953, c. 147; Cons art. 10, § 8. State ex rel. McMillion v. Stah 1955, 89 S.E.2d 693, 141 W.Va. 233. Munic pal Corporations ⟹ 222; Municipal Corpor tions ⟹ 225(1)

8. Admissibility of evidence

Extrinsic evidence relating to background an negotiations with regard to forming a publi service district were not admissible in regard t construction of a contract for furnishing of wa ter, where contract language was clear and un ambiguous that district was to furnish water a customer should require. Berkeley Count Public Service Dist. v. Vitro Corp. of America 1968, 162 S.E.2d 189, 152 W.Va. 252. Evi dence ⟹ 448

9. Costs

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

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

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

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters.

Acts 1986, c. 81.

Library References

Public Utilities ⟹145. Westlaw Topic No. 317A.

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

Notes of Decisions

In general 1

1. In general

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

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

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

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

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

Cross References

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

Library References

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

§ 16–13A–1c. General purpose of districts

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with: (1) The diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"); (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills"); (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs"). As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations: Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforce-

ment and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

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

Library References

Counties ⟹18.
Gas ⟹12.
Municipal Corporations ⟹5, 6.
Waters and Water Courses ⟹183.5.
Westlaw Topic Nos. 104, 190, 268, 405.

C.J.S. Counties § 31.
C.J.S. Gas §§ 43 to 45.
C.J.S. Municipal Corporations § 11.
C.J.S. Waters §§ 483, 543 to 581.

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

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

except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

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

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

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing

the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

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

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

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: *Provided,* That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the Public Service Commission shall apply. The Commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: *Provided, however,* That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the Secretary of State and the Public Service Commission by the first day of July of each year.

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

Library References

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

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

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1. Validity

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

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

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

2. Creation of public service districts

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

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

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

3. District boundaries

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

4. Notice of hearing

Provisions of statute, with respect to creation of public service districts, which relate to the filing of the petition or motion of the county court, the description of the territory to be embraced, and like provisions are mandatory; but, despite use of the word "shall," the requirements for posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Code, 16–13A–2. Canyon Public Service Dist. v. Tasa Coal Co., 1973, 195 S.E.2d 647, 156 W.Va. 606. Municipal Corporations ⟹ 12(3); Municipal Corporations ⟹ 12(6)

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

5. Number of voters within district

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

6. Costs

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

7. Referendum

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

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

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into

contracts necessary or incidental to its purposes, including contracts with a city, incorporated town or other municipal corporation located within without its boundaries for furnishing wholesale supply of water for the distrib tion system of the city, town or other municipal corporation, or for furnishi stormwater services for the city, town or other municipal corporation, a contract for the operation, maintenance, servicing, repair and extension of a properties owned by it or for the operation and improvement or extension the district of all or any part of the existing municipally owned public servi properties of any city, incorporated town or other municipal corporati included within the district: Provided, That no contract shall extend beyond maximum of forty years, but provisions may be included therein for a renew or successive renewals thereof and shall conform to and comply with the rigl of the holders of any outstanding bonds issued by the municipalities for t public service properties.

The powers of each public service district shall be vested in and exercised a public service board consisting of not less than three members, who shall persons residing within the district, who possess certain educational, busine or work experience which will be conducive to operating a public servi district. Each board member shall, within six months of taking office, succe fully complete the training program to be established and administered by t public service commission in conjunction with the division of environmen protection and the bureau of public health. Board members shall not be become pecuniarily interested, directly or indirectly, in the proceeds of a contract or service, or in furnishing any supplies or materials to the district n shall a former board member be hired by the district in any capacity within minimum of twelve months after board member's term has expired or su board member has resigned from the district board. The members shall appointed in the following manner:

Each city, incorporated town or other municipal corporation having population of more than three thousand but less than eighteen thousand entitled to appoint one member of the board, and each city, incorporated tov or other municipal corporation having a population in excess of eighte thousand shall be entitled to appoint one additional member of the board f each additional eighteen thousand population. The members of the boa representing such cities, incorporated towns or other municipal corporatio shall be residents thereof and shall be appointed by a resolution of t governing bodies thereof and upon the filing of a certified copy or copies of t resolution or resolutions in the office of the clerk of the county commissi which entered the order creating the district, the persons so appointed becor members of the board without any further act or proceedings. If the number members of the board so appointed by the governing bodies of cities, incorp rated towns or other municipal corporations included in the district equals exceeds three, then no further members shall be appointed to the board and t members so appointed are the board of the district except in cases of merger consolidation where the number of board members may equal five.

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

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

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

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

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six

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

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

The members of the board, and the chair, secretary and treasurer thereof shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

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

Law Review and Journal Commentaries

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

"Yes, West Virginia, there is a special priority for the purchase money mortgage:" The recognition of purchase money mortgage priority in West Virginia. Abraham M. Ashton, 107 W. Va. L. Rev. 525 (2005).

Library References

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

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

Notes of Decisions

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Sale of water 6
Standard of care 2
Tort Claims Act 7

1. In general

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

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

2. Standard of care

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

3. Ministerial officers, generally

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

4. Removal of members

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

5. Criminal responsibility of members

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

6. Sale of water

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

7. Tort Claims Act

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

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

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

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

Library References

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

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

Notes of Decisions

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Ministerial officers, generally 2
Sufficiency of evidence 3

1. Criminal responsibility of members

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

2. Ministerial officers, generally

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

3. Sufficiency of evidence

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

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

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

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

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

(3) For districts with two thousand customers or more, up to one hundred twenty-five dollars per attendance at regular monthly meetings and seventy-five

dollars per attendance at additional special meetings, total salary not to exceed three thousand seven hundred fifty dollars per annum; and

(4) For districts with four thousand or more customers, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served to the Public Service Commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter.

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

(1) For districts with annual revenues of less than fifty thousand dollars, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

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

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

(4) For districts with annual revenues of five hundred thousand dollars or more, up to one hundred fifty dollars per attendance at regular monthly meetings and one hundred dollars per attendance at additional special meetings, total salary not to exceed five thousand four hundred dollars per annum.

The public service district shall certify the number of customers served and its annual revenue to the public service commission beginning on the first day of July, two thousand, and continue each fiscal year thereafter.

(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules of the board.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful

misconduct in the performance of their duties. The county commission which created a district or county commissions if more than one created the district may, upon written request of the district, adopt an order changing the official name of a public service district: *Provided,* That such name change will not be effective until approved by the public service commission of West Virginia and the owners of any bonds and notes issued by the district, if any, shall have consented, in writing, to the name change. If a district includes territory located in more than one county, the county commission or county commissions changing the name of the district shall provide any county commission into which the district also extends with a certified copy of the order changing the name of the district. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.

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

Library References

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

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

Notes of Decisions

In general 1

1. In general

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

§ 16–13A–5. General manager of board

The board may employ a general manager to serve a term of not more than five years and until his or her successor is employed, and his or her compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his or her time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he or she shall perform and exercise such other powers and duties as may be conferred upon him or her by the board.

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

The board of any public service district which purchases water, sewer or stormwater service from a municipal water, sewer or stormwater system or

another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water, sewer or stormwater system or public service district from which such water, sewer or stormwater service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service.

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

Library References

Counties ⚷65, 68.
Municipal Corporations ⚷149, 161.
Westlaw Topic Nos. 104, 268.
C.J.S. Counties §§ 101 to 103, 107 to 118.
C.J.S. Municipal Corporations §§ 361 to 366, 368, 372 to 390.

§ 16–13A–6. Employees of board

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

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

Library References

Counties ⚷65, 68, 87.
Municipal Corporations ⚷149, 161, 170.
Westlaw Topic Nos. 104, 268.
C.J.S. Counties §§ 101 to 103, 107 to 118, 128.
C.J.S. Municipal Corporations §§ 361 to 366, 368, 372 to 405.

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

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

possible when hiring laborers for public service district construction or main nance repair jobs. It shall further be the duty of the board to encoura contractors to use American made products in their construction to the exte possible. Any obligations incurred of any kind or character shall not in a event constitute or be deemed an indebtedness within the meaning of any of t provisions or limitations of the constitution, but all such obligations shall payable solely and only out of revenues derived from the operation of the publ service properties of the district or from proceeds of bonds issued as hereinaft provided. No continuing contract for the purchase of materials or supplies for furnishing the district with electrical energy or power shall be entered in for a longer period than fifteen years.

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

Library References

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

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

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

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

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

and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

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

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways: Provided, however, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof.

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

Library References

Counties ⚷103, 104.
Eminent Domain ⚷6, 16.
Municipal Corporations ⚷221, 224.
Westlaw Topic Nos. 104, 148, 268.

C.J.S. Counties §§ 143 to 144, 147.
C.J.S. Municipal Corporations §§ 873 to 880.
C.J.S. Property § 17.

Notes of Decisions

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1. Validity

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

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

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

2. In general

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

3. Eminent domain powers

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

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

4. Valuation of property

Although landowner is competent to give estimate of value of property in eminent domain proceeding, that valuation is not conclusive; government agency may rely on appraisal report concerning estimated value of property to be taken. Sexton v. Public Service Com'i 1992, 423 S.E.2d 914, 188 W.Va. 305. Ev dence ⟹ 568(4)

5. Environmental assessment

Whether construction of sewage lagoor would constitute "nuisance" does not defe: Public Service Commission's (PSC) jurisdictio to issue certificate of public convenience an necessity; while PSC may assess environment: considerations, chief inquiry by PSC is need (public for project. Code, 24–2–11. Sexton ' Public Service Com'n, 1992, 423 S.E.2d 91. 188 W.Va. 305. Municipal Corporations ⟹ 708

6. Connections with sewers or drains

City, rather than sewer and water district: was entitled to provide sewer and water se: vices to newly developed tract that was withi districts' boundaries, but was annexed to cit where such services were not previously fu nished to tract. Code, 16–13A–8. Berkele County Public Service Sewer Dist. v. West Vi ginia Public Service Com'n, 1998, 512 S.E.2 201, 204 W.Va. 279. Municipal Corporation ⟹ 712(1); Waters And Water Courses ⟹ 20

If a tract of real estate located within a publi service district has been annexed into a munici pality, then, as between the municipality an the public service district, the municipality ha the superior right to extend water and/or sewe service which were not being previously fur nished to the tract by the public service district and under those circumstances, a public servic district would need the consent of the munici pality and the Public Service Commission (PSC in order to provide such service. Code 16–13A–8. Berkeley County Public Servic Sewer Dist. v. West Virginia Public Servic Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279 Municipal Corporations ⟹ 712(1); Waters An Water Courses ⟹ 201; Waters And Wate Courses ⟹ 202

7. Public corporation

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

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

(a)(1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management,

maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia division of highways.

(2) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or fifty dollars, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or fifty dollars and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or fifty dollars. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or fifty dollars

has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the public service commission may prescribe: *Provided,* That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities either water or sewer, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: *Provided,* That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: *Provided, however,* That any termination of water service must comply with all rules and orders of the public service commission.

(c) Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the division of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where

there is gravity flow or transportation by any other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the division of health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the division of health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

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

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and munici-

pal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section.

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

Law Review and Journal Commentaries

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

"Yes, West Virginia, there is a special priority for the purchase money mortgage:" The recognition of purchase money mortgage priority in West Virginia. Abraham M. Ashton, 107 W. Va. L. Rev. 525 (2005).

Library References

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

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

Notes of Decisions

Notice of availability of sewer service 5
Public service district liens 3
Rates and charges for service 4
Takings 2
Validity 1

1. Validity

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

2. Takings

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

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

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

3. Public service district liens

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

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

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

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

4. Rates and charges for service

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

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

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

5. Notice of availability of sewer service

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

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

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that

the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

Acts 1982, c. 74.

Library References

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

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

§ 16–13A–10. Budget

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

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

Library References

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

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

Notes of Decisions

In general 1

1. In general

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

§ 16–13A–11. Accounts; audit

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders

pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit may be any audit by an independent public accountant completed within one year of the time required for the submission of the report: Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine, chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

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

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

Library References

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

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

§ 16–13A–12. Disbursement of district funds

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

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

Library References

Counties ⟹158.
Municipal Corporations ⟹883.
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 198.
C.J.S. Municipal Corporations §§ 1626, 1635.

§ 16–13A–13. Revenue bonds

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

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

Library References

Counties ⚷174.
Municipal Corporations ⚷911.
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 218.
C.J.S. Municipal Corporations §§ 1647 to 1649.

Notes of Decisions

In general 1

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1. In general

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

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

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

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

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

Library References

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

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

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

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable

and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee.

Acts 1953, c. 147.

Library References

Counties ⟹183.
Municipal Corporations ⟹950(15).
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 222.
C.J.S. Municipal Corporations §§ 1708 to 1709.

United States Code Annotated

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

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

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

Acts 1953, c. 147.

Library References

Counties ⟹186.5.
Municipal Corporations ⟹951.
Westlaw Topic Nos. 104, 268.

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

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

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

Acts 1953, c. 147.

Library References

Counties ⟹188.
Municipal Corporations ⟹937, 955.
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 226.
C.J.S. Municipal Corporations §§ 1707, 1711.

Notes of Decisions

In general 1

1. In general

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

§ 16–13A–18. Operating contracts

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

Acts 1953, c. 147.

Library References

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

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

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

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

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

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

Library References

Counties ⇐110.
Municipal Corporations ⇐225.
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 147.
C.J.S. Municipal Corporations §§ 882 to 892.

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

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

Acts 1953, c. 147.

Library References

Counties ⇐188.
Municipal Corporations ⇐937, 955.
Westlaw Topic Nos. 104, 268.

C.J.S. Counties § 226.
C.J.S. Municipal Corporations §§ 1707, 1711.

Notes of Decisions

In general 1

1. In general

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

§ 16–13A–20. Refunding revenue bonds

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding

bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded.

Acts 1953, c. 147.

Library References

Counties ⟹175.
Municipal Corporations ⟹913.
Westlaw Topic Nos. 104, 268.
C.J.S. Counties § 218.
C.J.S. Municipal Corporations §§ 1647 to 1648, 1651.

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

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

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

Library References

Counties ⟹18.
Municipal Corporations ⟹5.
Taxation ⟹2316, 3519.
Westlaw Topic Nos. 104, 268, 371.
C.J.S. Counties § 31.
C.J.S. Municipal Corporations § 11.

Notes of Decisions

In general 2
Validity 1

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1. Validity

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

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

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

2. In general

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

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

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

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

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

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

Library References

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

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

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

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect, by any county court of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act.

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

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

Library References

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

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

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

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

advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

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

Library References

Counties ⇐149.
Municipal Corporations ⇐864(3).
Westlaw Topic Nos. 104, 268.

C.J.S. Counties §§ 185, 187.
C.J.S. Municipal Corporations §§ 1583 to 1585, 1587.

Notes of Decisions

In general 1

1. In general

The borrowing by PSD's of money from counties and/or municipalities, as evidenced by a note, is permissible borrowing under this section. 62 W.Va. Op.Atty.Gen. 27 (May 6, 1988) 1988 WL 483331.

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

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article without the prior consent and approval of the Public Service Commission: *Provided*, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after the eighth day of July, two thousand five, from the commission and where the cost of the project changes but the change does not affect the rates established for the project.

(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:

(1) Experience with the same engineering firm; or

(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

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

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

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

(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.

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

Library References

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

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

Research References

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

Notes of Decisions

In general 1
Certificate of public convenience and necessity 2

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1. In general

Proposed sewage treatment project complied with buffer zone requirements where all parties acknowledged that distance of proposed sewage lagoons from property owners' home was further than minimum buffer-zone requirement of 300 feet; Public Service Commission relied on ample evidence in record to support claim that proposed location was both cost-effective and environmentally sound. Code, 16–13A–25, 24–2–11, 24–2–11(a). Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305.
Municipal Corporations ⟹ 708

2. Certificate of public convenience and necessity

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

West's

Annotated Code of West Virginia

Using the Classification and Numbering System of the 1931 Code of West Virginia, as Amended

Chapter 16

2008
Cumulative Annual Pocket Part

Supplementing 2008 Main Volume

Includes laws through the 2008 First Extraordinary Session

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the respective officers and departments thereof, including the sanitary board, are govern by the provisions of this article.

(k) The jurisdiction and authority provided by this section does not extend to highwa road and drainage easements and stormwater facilities constructed, owned or operated by West Virginia Division of Highways and no rates, fees or charges for stormwater services costs of compliance may be assessed against highways, road and drainage easements and stormwater facilities constructed, owned and/or operated by the West Virginia Division Highways.

(*l*) A municipality which has been designated by the Environmental Protection Agency an entity to serve a West Virginia Separate Storm Sewer System community, as defined in C. F. R. § 122.26, has the authority to enact ordinances or regulations which allow for t issuance of orders, the right to enter properties and the right to impose reasonable fines a penalties regarding correction of violations of municipal stormwater ordinances or regulati within the municipal watershed served by the municipal stormwater system, as long as su rules, regulations, fines or actions are not contrary to any rules or orders of the Pub Service Commission.

(m) Notice of a violation of a municipal stormwater ordinance or regulation shall be serv in person to the alleged violator or by certified mail return receipt requested. The not shall state the nature of the violation, the potential penalty, the action required to correct t violation and the time limit for making the correction. Should a person, after receipt proper notice, fail to correct the violation of the municipal stormwater ordinance or regu tion, the municipality may make or have made the corrections of the violation and bring t party into compliance with the applicable stormwater ordinance or regulation. The muni pality may collect the costs of correcting the violation from the person by instituting a ci action, as long as such actions are not contrary to any rules or orders of the Public Servi Commission.

(n) A municipality which has been designated by the Environmental Protection Agency an entity to serve a West Virginia Separate Storm Sewer System community shall prepare annual report detailing the collection and expenditure of rates, fees or charges and make available for public review at the place of business of the governing body and the stormwat utility main office.

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 200 Acts 2008, c. 202, eff. March 8, 2008.

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

Section

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

§ 16–13A–9. Rules; service rates and charges; discontinuance of service; r quired water and sewer connections; lien for delinquent fe

(a)(1) The board may make, enact and enforce all needful rules in connection with th acquisition, construction, improvement, extension, management, maintenance, operation, car protection and the use of any public service properties owned or controlled by the distric The board shall establish rates, fees and charges for the services and facilities it furnishe which shall be sufficient at all times, notwithstanding the provisions of any other law or law to pay the cost of maintenance, operation and depreciation of the public service properties ar principal of and interest on all bonds issued, other obligations incurred under the provision of this article and all reserve or other payments provided for in the proceedings whic authorized the issuance of any bonds under this article. The schedule of the rates, fees an charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking int consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or fifty dollars, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or fifty dollars and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or fifty dollars. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or fifty dollars has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district

providing sewer or stormwater service to the delinquent account, shall terminate its wat service to the customer having the delinquent sewer or stormwater account: *Provide however,* That any termination of water service must comply with all rules and orders of t Public Service Commission.

(c) Any district furnishing sewer facilities within the district may require, or may petition to the circuit court of the county in which the property is located, compel or m require the Division of Health to compel all owners, tenants or occupants of any house dwellings and buildings located near any sewer facilities where sewage will flow by gravity be transported by other methods approved by the Division of Health, including, but n limited to, vacuum and pressure systems, approved under the provisions of section nin article one, chapter sixteen of this code, from the houses, dwellings or buildings into t sewer facilities, to connect with and use the sewer facilities and to cease the use of all oth means for the collection, treatment and disposal of sewage and waste matters from t houses, dwellings and buildings where there is gravity flow or transportation by any oth methods approved by the Division of Health, including, but not limited to, vacuum a pressure systems, approved under the provisions of section nine, article one, chapter sixte of this code and the houses, dwellings and buildings can be adequately served by the sew facilities of the district and it is declared that the mandatory use of the sewer faciliti provided for in this paragraph is necessary and essential for the health and welfare of t inhabitants and residents of the districts and of the state. If the public service distri requires the property owner to connect with the sewer facilities even when sewage fro dwellings may not flow to the main line by gravity and the property owner incurs costs f any changes in the existing dwellings' exterior plumbing in order to connect to the ma sewer line, the Public Service District Board shall authorize the district to pay all reasonab costs for the changes in the exterior plumbing, including, but not limited to, installatio operation, maintenance and purchase of a pump or any other method approved by th Division of Health. Maintenance and operation costs for the extra installation should b reflected in the users charge for approval of the Public Service Commission. The circu court shall adjudicate the merits of the petition by summary hearing to be held not later tha thirty days after service of petition to the appropriate owners, tenants or occupant

(d) Whenever any district has made available sewer facilities to any owner, tenant o occupant of any house, dwelling or building located near the sewer facility and the enginee for the district has certified that the sewer facilities are available to and are adequate to serv the owner, tenant or occupant and sewage will flow by gravity or be transported by othe methods approved by the Division of Health from the house, dwelling or building into th sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, th rates and charges for services established under this article only after thirty-day notice of th availability of the facilities has been received by the owner, tenant or occupant. Rates an charges for sewage services shall be based upon actual water consumption or the averag monthly water consumption based upon the owner's, tenant's or occupant's specific custome class.

(e) The owner, tenant or occupant of any real property may be determined and declared t be served by a stormwater system only after each of the following conditions is met: (1) the district has been designated by the Environmental Protection Agency as an entity to serve West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. § 122.26 (2) the district's authority has been properly expanded to operate and maintain a stormwate system; (3) the district has made available a stormwater system where stormwater from th real property affects or drains into the stormwater system; and (4) the real property i located in the Municipal Separate Storm Sewer System's designated service area. It i further hereby found, determined and declared that the mandatory use of the stormwate system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided,* That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by section eleven, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

Acts 1953, c. 147; Acts 1965, c. 134; Acts 1980, c. 60; Acts 1981, c. 124; Acts 1986, c. 81; Acts 1989, c. 174; Acts 1994, c. 61; Acts 2002, c. 272, eff. 90 days after March 9, 2002; Acts 2003, c. 183, eff. 90 days after March 8, 2003; Acts 2008, c. 202, eff. March 8, 2008.

ARTICLE 19

REVISED ANATOMICAL GIFT ACT

Section	
16–19–1.	Short title.
16–19–2.	Applicability.
16–19–3.	Definitions.
16–19–4.	Who may make anatomical gift before donor's death.
16–19–5.	Manner of making anatomical gift before donor's death.
16–19–6.	Amending or revoking anatomical gift before donor's death.
16–19–7.	Refusal to make anatomical gift; effect of refusal.
16–19–8.	Preclusive effect of anatomical gift, amendment, or revocation.
16–19–9.	Who may make anatomical gift of decedent's body or part.
16–19–10.	Manner of making, amending, or revoking anatomical gift of decedent's body or part.
16–19–11.	Persons who may receive anatomical gift; purpose of anatomical gift.
16–19–12.	Search and notification.
16–19–13.	Delivery of document of gift not required; right to examine.
16–19–14.	Rights and duties of procurement organization and others.
16–19–15.	Coordination of procurement and use.
16–19–16.	Prohibited acts; sale or purchase of parts prohibited.
16–19–17.	Immunity.
16–19–18.	Law governing validity; choice of law as to execution of document of gift; presumption of validity.
16–19–19.	Donor registry.
16–19–20.	Effect of anatomical gift on advance health-care directive.
16–19–21.	Cooperation between medical examiner and procurement organization.
16–19–22.	Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.
16–19–23.	Relation to Electronic Signatures in Global and National Commerce Act.

Acts 2008, c. 191, replaced the Anatomical Gift Act (§§ 16–9–1 to 16–9–14) with the Revised Anatomical Gift Act (§§ 16–9–1 to 16–9–23).

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 31, ARTICLE 15A OF THE WEST VIRGINIA CODE, AND CHAPTER 31 ARTICLE 15A OF THE 2008 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

July 6, 2009

Natalie E. Tennant

Secretary of State

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Section

31-15A-1. Short title.
31-15A-2. Definitions.
31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.
31-15A-4. Development of guidelines and preliminary application for funding assistance.
31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
31-15A-7. Current and prospective planning; roads and highways; report to division of highways.
31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.
31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.
31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-12. Additional powers of water development authority.
31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.
31-15A-14. Termination or dissolution.
31-15A-15. Projects not to be considered public improvements; competitive bid requirements.
31-15A-16. Dedication of severance tax proceeds.
31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.
31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.
31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.
31-15A-20. Infrastructure revenue bonds lawful investments.
31-15A-21. Purchase and cancellation of infrastructure revenue bonds.
31-15A-22. Refunding revenue bonds.
31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.
31-15A-24. Infrastructure revenue bonds exempt from taxation.

§31-15A-1. Short title

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act."

Acts 1994, 1st Ex. Sess., c. 26.

§ 31–15A–2. Definitions

For purposes of this article:

(a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, (other obligation issued by the water development authority pursuant to th article, including bonds to refund such bonds and notes to renew such note and notes in anticipation of and payable from the proceeds of such bond

(b) "Code" means the code of West Virginia, one thousand nine hundre thirty-one, as amended;

(c) "Cost" means, as applied to any project to be financed, in whole or i part, with infrastructure revenues or funds otherwise provided pursuant to th article, the cost of planning, acquisition, improvement and construction of th project; the cost of preliminary design and analysis, surveys, borings; the co of environmental, financial, market and engineering feasibility studies, asses ments, applications, approvals, submissions or clearances; the cost of prepara tion of plans and specifications and other engineering services; the cost (acquisition of all land, rights-of-way, property rights, easements, franchis rights and any other interests required for the acquisition, repair, improvemer or construction of the project; the cost of demolishing or removing an buildings or structures on land so acquired, including the cost of acquiring an lands to which buildings or structures may be moved; the cost of excavatior grading, shaping or treatment of earth, demolishing or removing any building or structures; the cost of constructing any buildings or other improvement the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnish ings and equipment; loan or origination fees and all finance charges an interest incurred prior to and during the construction and for no more than si months after completion of construction; the cost of all legal services an expenses; the cost of all plans, specifications, surveys and estimates of cost; al working capital and other expenses necessary or incident to determining th feasibility or practicability of acquiring, repairing, improving or constructin any project; the cost of placing any project in operation; and all other cost and expenses of any kind or nature incurred or to be incurred by the projec sponsor developing the project that are reasonable and necessary for carryin out all works and undertakings necessary or incident to the accomplishment o any project: Provided, That costs shall not include any amounts related to th ongoing operations of the owner or operator, depreciation thereof or any othe cost which the council or the water development authority has not determinec to be consistent with the purposes and objectives of this article;

(d) "Council" means the West Virginia infrastructure and jobs developmen council created in section three of this article;

(e) "Division of environmental protection" means the division of environmental protection established under article one, chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined:

(1) Is essential to the immediate economic development of an area of the state; and

(2) will not likely be developed in that area if construction of the project is not commenced immediately;

(i) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine of this article;

(*l*) "infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation:

(1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and

(2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(n) "Need of the project sponsors" means there is a public need for a project. The council shall construe a population increase evidenced by the last two decennial censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need exists for projects in that county.

(o) "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(p) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(q) "Public service commission" means the public service commission of West Virginia created and established under section three, article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(r) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(s) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four of this code or which is required to file its tariff with the public service commission;

(t) "State development office" means the West Virginia development office established under article two, chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(u) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commission, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(v) "Waste water facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(w) "Water development authority" means the West Virginia water development authority continued pursuant to the provisions of article one, chapter

twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties; and

(x) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–3. West Virginia infrastructure and jobs development council continued; members of council; staff of council

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided, further That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council.

No vacancy in the membership of the council impairs the rights of a quorum l such vote to exercise all the rights and perform all the duties of the counc

(d) No member of the council who serves by virtue of his or her office sha receive any compensation or reimbursement of expenses for serving as member. The members of the council who represent the general public sha receive reimbursement for actual expenses incurred in the service of th council.

(e) The council shall meet at least monthly to review projects and infrastru ture projects requesting funding assistance and otherwise to conduct its bus ness, and shall meet more frequently if necessary. Notwithstanding any othe provision of this article to the contrary, the economic development authorit shall not be subject to council review with regard to any action taken pursuan to the authority established in article fifteen, chapter thirty-one of this code no shall the governor's civil contingent fund be subject to council review wit regard to projects or infrastructure projects funded through the governor's civ contingent fund.

(f) The water development authority shall provide office space for the coun cil, and each governmental agency represented on the council shall provid staff support for the council in the manner determined by the council from tim to time.

(g) The council shall invite to all its meetings one or more representatives o the United States department of agriculture, rural economic community devel opment, the United States economic development agency and the United State army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate th purposes of this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995.

§ 31–15A–4. Development of guidelines and preliminary application fo funding assistance

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six of this article; (5) the cost effectiveness of the project or infrastructure project as compared with

alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either

acceptable bids or all funding in place on the effective date of this act is nc required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed prelim nary application submitted to it, review the preliminary application and eithe (i) make a written recommendation as to the infrastructure project or projec financing, in terms of the kind, amount and source of funding, which th project sponsor submitting the application should pursue and which the stat infrastructure agency or agencies should consider an appropriate investment c public funds, or (ii) if the council determines that (1) the proposed project o infrastructure project is not eligible for funding assistance from any stat infrastructure agency, or (2) the proposed project or infrastructure project i not otherwise an appropriate or prudent investment of state funds, the counci shall recommend that the project sponsor not seek funding from any stat infrastructure agency. A project sponsor shall include the preliminary applica tion and the council's recommendations in any application to a state infrastruc ture agency.

(c) The council shall provide a copy of its recommendation with respect tc each preliminary application, together with a copy of the preliminary applica tion, to all appropriate state infrastructure agencies, which shall take intc account the council's recommendations with respect to a project or infrastruc ture project before taking any action with respect to the project. No state infrastructure agency shall take any action inconsistent with the recommenda tion of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31–15A–6. Powers, duties and responsibilities of the council generally; comprehensive assessment

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

(3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

(4) To make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three year period after the initial assessment and inventory is completed.

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-7. Current and prospective planning; roads and highways; report to division of highways

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the division of highways for the development and building of new roads. Upon completion of an environmental impact study, the commissioner of highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the

commissioner of the division of highways on the feasibility of the expansion new or existing water and sewer lines concomitant to the construction of new roads.

(b) The council has the authority to appoint local infrastructure plann teams. The local infrastructure planning teams may consist of the following: designee of the division of highways from the region where the new road being built; a designee of the division of highways from the central state offi a designee from the environmental engineers division of the department health and human resources; a designee from the local developmental autho ty where the new road is being built; a designee from the regional developm tal authority in the area where the new road is being built; a designee from t public service commission; a designee from the division of environmen protection; a designee from the county commission where the new road being built who shall serve as chairperson of the planning team; a citizen of t county where the new road is being built to be chosen by the county comm sion; and the elected state delegates and senators from the area where the n road is being built. In order to avoid delay of any highway project, immedia ly upon appointment of a local infrastructure planning team, the director of t division of highways shall submit to the council a time frame within which t planning team must act and within which the planning team must submit a plans, maps, recommendations or reports developed pursuant to this subse tion. The local infrastructure planning team shall meet prior to the develo ment and building of a new road. Members of the local infrastructure plann team shall only receive payment for actual expenses incurred. The loc infrastructure planning team shall advise the commissioner of the division highways on the feasibility of an infrastructure plan. The local infrastructu planning team shall meet to develop an infrastructure plan that includes a assessment study of existing water and sewer lines and a feasibility study c future development and laying of water and sewer lines. After these studies a completed, a developmental map shall be drawn of the proposed road rou with overlays of the proposed water and sewer lines. These studies and t map shall be presented to the commissioner of the division of highways an shall be used by the commissioner in the planning, developing and building the road.

(c) The water development authority shall establish a restricted accou within the infrastructure fund to be expended for the construction of water an sewage lines as may be recommended by the council in accordance with thi article and specifically, in accordance with the plan developed under subsectio (b) of this section. The reserve account shall be known as the "infrastructur road improvement reserve account". The council and the division of highway may enter into agreements to share the cost of financing projects approved i accordance with this section from moneys available in the infrastructure roa reserve account and moneys available from the state road fund. Annually, th council may direct the water development authority to transfer funds from th infrastructure fund in an amount not to exceed one million dollars to th

restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road, these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or wastewater facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven, article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five, article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven, article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty-day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five, article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (*l*), section two of this article and to include a water facility project as defined in subsection (n), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project.

The project is hereby specifically authorized and the public land corporat shall have and may exercise the power of eminent domain and all autho otherwise prescribed by law to acquire necessary land and rights-of-way, include approximately four hundred seventy-eight acres, in connection with project. Funding for the project shall be provided by the federal governm from the Appalachian regional commission through the United States conservation service. Upon completion of the project, the property acqui shall be transferred to the state park system. The commissioner of the divis of tourism and parks or the successor to the commissioner's powers and du is directed to expand the boundaries of North Bend state park to include project area and to operate the expanded park property, including impro recreational facilities, from funds appropriated for that purpose.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–9. Infrastructure fund; deposits in fund; disbursements to p vide loans, loan guarantees, grants and other assistan loans, loan guarantees, grants and other assistance shall subject to assistance agreements

(a) The water development authority shall create and establish a spec revolving fund of moneys made available by appropriation, grant, contributi or loan to be known as the "West Virginia Infrastructure Fund". This fu shall be governed, administered and accounted for by the directors, officers a managerial staff of the water development authority as a special purp account separate and distinct from any other moneys, funds or funds own and managed by the water development authority. The infrastructure fu shall consist of sub-accounts, as deemed necessary by the council or the wat development authority, for the deposit of: (1) Infrastructure revenues; (2) a appropriations, grants, gifts, contributions, loan proceeds or other revenu received by the infrastructure fund from any source, public or private; (amounts received as payments on any loans made by the water developme authority to pay for the cost of a project or infrastructure project; (4) insuran proceeds payable to the water development authority or the infrastructure fu in connection with any infrastructure project or project; (5) all income earn on moneys held in the infrastructure fund; (6) all funds deposited in acco dance with section four of article fifteen-b; and (7) all proceeds derived fro the sale of bonds issued pursuant to article fifteen-b of this chapter.

Any money collected pursuant to this section shall be paid into the We Virginia infrastructure fund by the state agent or entity charged with th collection of the same, credited to the infrastructure fund, and used only f purposes set forth in this article or article fifteen-b.

Amounts in the infrastructure fund shall be segregated and administered b the water development authority separate and apart from its other assets an programs. Amounts in the infrastructure fund may not be transferred to an other fund or account or used, other than indirectly, for the purposes of an other program of the water development authority, except that the wate development authority may use funds in the infrastructure fund to reimburs

itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen, chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b of this chapter, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to

appoint a receiver for the project or infrastructure if the project sponsor shou default on any terms of the agreement.

(e) Any resolution of the water development authority approving loan, lo guarantee, grant or other assistance shall include a finding and determinati that the requirements of this section have been met.

(f) The interest rate on any loan to governmental, quasi-governmental, or r for profit project sponsors for projects made pursuant to this article shall r exceed three percent per annum. Due to the limited availability of fun available for loans for projects, it is the public policy of this state to prioriti funding needs to first meet the needs of governmental, quasi-governmental a not for profit project sponsors and to require that loans made to for-pro entities shall bear interest at the current market rates. Therefore, no loan m be made by the council to a for-profit entity at an interest rate which is le than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be ma by an independent certified public accountant of its books, accounts a records, with respect to the receipts, disbursements, contracts, leases, assig ments, loans, grants and all other matters relating to the financial operation the infrastructure fund, including the operating of any sub-account within t infrastructure fund. The person performing such audit shall furnish copies the audit report to the commissioner of finance and administration, where th shall be placed on file and made available for inspection by the general publi The person performing such audit shall also furnish copies of the audit repo to the Legislature's joint committee on government and finance.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995.

Acts 1990, c. 2, abolished the office of commissioner of finance and administration and transferred all duties and powers to the secretary of administration. See § 5A–1–2.

§ 31–15A–10. Recommendations by council for expenditures of funds b loan, grant or for engineering assistance

(a) To further accomplish the purpose and intent of this article, the wate development authority shall use the moneys in the infrastructure fund create pursuant to section nine of this article, upon receipt of one or more recommen dations from the council pursuant to section five of this article, to make loans with or without interest, loan guarantees or grants and to provide othe assistance, financial, technical or otherwise, to finance all or part of the costs o infrastructure projects or projects to be undertaken by a project sponsor Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for th funding of projects. No loan, loan guarantee, grant or other assistance shall b made or provided except upon a determination by the council that the loan loan guarantee, grant or other assistance and the manner in which it will b provided are necessary or appropriate to accomplish the purposes and intent o this article, based upon an application submitted to the council: Provided

however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three, chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand ninety-eight, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to article two, chapter twenty-two-c and article thirteen-c, chapter sixteen of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code: Provided, however, That infrastructure projects as defined in subsection (1), section two of this article shall be subject to pro rata distribution. When determining median household income of a geographic area of the

project to be served, the council shall consider any surveys of the income of t households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the proje to be funded will provide subsidized services to certain users in the service ar of the project.

(e) Notwithstanding any other provision of this article to the contra engineering studies and requirements imposed by the council for prelimina applications shall not exceed those engineering studies and requirements whi are necessary for the council to determine the economic feasibility of t project. If the council determines that the engineering studies and requi ments for the preapplication would impose an undue hardship on any proje sponsor, the council may provide funding assistance to project sponsors defray the expenses of the preapplication process from moneys available in t infrastructure fund for making loans: Provided, That the council may on provide funding assistance in an amount equal to five thousand dollars or fif percent of the total preapplication cost of the project, whichever amount greater. If the project is ultimately approved for a loan by the council, t amount of funding assistance provided to the project sponsor for the preapp cation process shall be included in the total amount of the loan to be repaid b the project sponsor. If the project is not ultimately approved by the counc then the amount of funding assistance provided to the project sponsor will b considered a grant by the council and the total amount of the assistance sha be forgiven. In no event may the amount of funding assistance provided to a project sponsors exceed, in the aggregate, one hundred thousand dolla annually.

(f) The council shall report to the governor, the speaker of the House Delegates and the president of the Senate during each regular and interi session of the Legislature, on its activities and decisions relating to distributio or planned distribution of grants and loans under the criteria to be develope pursuant to this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 18 eff. 90 days after March 14, 1998.

§ 31–15A–11. Reservation of funds for projects and infrastructure project

Eighty percent of the funds deposited in the West Virginia infrastructure fun shall be dedicated for the purpose of providing funding for the cost of project as defined in subsection (n), section two of this article. Twenty percent of th funds deposited in the West Virginia infrastructure fund shall be dedicated fo the purpose of providing funding for costs of infrastructure projects as define in subsection (*l*), section two of this article. Project sponsors of infrastructur projects shall follow the application process as established by this article Provided, That notwithstanding any provision of this article to the contrary, al applications for any infrastructure project shall be submitted to the council fo

community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–12. Additional powers of water development authority

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31–15A–13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions

No part of the infrastructure fund or the West Virginia infrastructure revenue debt service fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–14. Termination or dissolution

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the

infrastructure fund shall pass to and be vested in the state, subject to the righ of lienholders and other creditors.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-15. Projects not to be considered public improvements; competitive bid requirements

(a) No project or infrastructure project acquired, constructed, maintained c financed, in whole or in part, by the water development authority shall b considered to be a "public improvement" within the meaning of the provision of article five-a, chapter twenty-one of this code as a result of the financing

(b) The state and its subdivisions shall, except as provided in subsection (c) c this section, solicit competitive bids and require the payment of prevailing wag rates as provided in article five-a, chapter twenty-one of this code for ever project or infrastructure project funded pursuant to this article exceedin twenty-five thousand dollars in total cost.

Following the solicitation of the bids, the construction contract shall b awarded to the lowest qualified responsible bidder, who shall furnish a suffi cient performance and payment bond: Provided, That the state and its subdivi sions may reject all bids and solicit new bids on the project.

(c) This section does not:

(1) Apply to work performed on construction or repair projects not exceedin a total cost of fifty thousand dollars by regular full-time employees of the stat or its subdivisions: Provided, That no more than fifty thousand dollars shall b expended on an individual project in a single location in a twelve-mont period;

(2) Prevent students enrolled in vocational educational schools from bein used in the construction or repair projects when such use is a part of th students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not mad immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the state or a subdivision of the state comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(d) The provisions of subsection (b) of this section do not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.

Acts 1994, 1st Ex. Sess., c. 26; Acts 2001, c. 45, eff. 90 days after April 14, 2001.

Historical and Statutory Notes

Acts 2001, c. 45 rewrote this section which as enacted provided:

"(a) No project or infrastructure project acquired, constructed, maintained or financed in whole or in part by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code, as a result of such financing.

"(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

"(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state."

§ 31-15A-16. Dedication of severance tax proceeds

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry

pursuant to section twenty-a of said article thirteen-a shall remain dedicated fo the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first da of May, one thousand nine hundred ninety-five, the council, by resolution, sha certify to the treasurer and the water development authority the principal ar interest coverage ratio and amount for the following fiscal year on any infr structure general obligation bonds issued pursuant to the provisions of artic fifteen-b of this chapter.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 18 eff. 90 days after March 14, 1998.

§ 31–15A–17. Water development authority empowered to issue infr structure revenue bonds and refunding bonds; creation o infrastructure revenue debt service fund; funding of in frastructure revenue debt service fund; requirements an manner of such issuance

(a) To accomplish the purpose and intent of this article, the water develop ment authority is hereby empowered at the written request of the council t issue from time to time infrastructure revenue bonds of the state in suc principal amounts as the council deems necessary to make loans and loa guarantees and other forms of financial assistance to project sponsors for on or more projects or infrastructure projects: Provided, That the water develop ment authority may not issue any such bonds, other than refunding bonds unless the council by resolution determines that the aggregate cost of th projects or infrastructure projects expected to be constructed during an annual period exceeds (1) the projected annual infrastructure revenues for th same period, and (2) the principal and interest payments not otherwise pledge to the infrastructure revenue debt service fund that are due the water develop ment authority on all outstanding loans previously made by the water develop ment authority pursuant to the provisions of this article.

(b) The proceeds of infrastructure revenue bonds shall be used solely for th purpose of making loans and loan guarantees and other forms of financia assistance to sponsors of one or more projects or infrastructure projects, an shall be deposited in one or more special accounts with the trustee under th trust agreement securing such bonds and disbursed from time to time fo projects or infrastructure projects in accordance with this article: Provided That notwithstanding any provision of this code to the contrary, twenty percen of the funds deposited in the special account shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsectio (*l*), section two, of this article.

(c) The water development authority may not authorize the disbursement o any proceeds of infrastructure revenue bonds unless it has received documentation from the council pursuant to the provisions of section ten of this article.

(d) There is hereby created in the water development authority a special fund which shall be designated and known as the "West Virginia Infrastructure

Revenue Debt Service Fund," into which shall be transferred solely from the loan repayments deposited in the infrastructure fund the amounts certified by the director of the water development authority as necessary to pay the principal, premium, if any, and interest on infrastructure revenue bonds and any reserve requirements, subject to the terms of any agreement with the holders of the infrastructure revenue bonds. All amounts deposited in the West Virginia infrastructure revenue debt service fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any infrastructure revenue bonds authorized by this article: Provided, That amounts on deposit in the fund may be used to establish or maintain reserves created for the purposes of securing such infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge is made, and the West Virginia infrastructure revenue debt service fund so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the water development authority irrespective of whether the parties have notice thereof.

(e) Except as may otherwise be expressly provided in this article or by resolution of the water development authority, every issue of infrastructure revenue bonds shall be special obligations of the water development authority payable solely from amounts in the West Virginia infrastructure revenue debt service fund, and the reserves created for this purpose by the water development authority, without preference or priority among the bonds regardless of when issued, subject only to any agreements with the holders of any bonds to the contrary. All such bonds are hereby declared to be negotiable instruments.

(f) Infrastructure revenue bonds shall be authorized by resolution of the water development authority. These bonds shall bear such dates and shall mature at such times, in case of any note or renewal thereof not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution may provide. Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the registration privileges, shall be payable in the medium and place of payment, and shall be subject to the terms of redemption as the water development authority may authorize. Infrastructure revenue bonds may be sold by the water development authority at public or private sale at the price the water development authority determines in consultation with the council. Infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the water development authority, either or both of whom may use a facsimile signature. The official seal of the water development authority or a facsimile thereof shall be affixed thereto or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of the water development authority. If any officer whose signature, or a facsimile of whose signature appears on any infrastructure revenue bond ceases to be such officer before delivery of such bond, such signature or

facsimile is nevertheless sufficient for all purposes to the same extent as if he she had remained in office until such delivery, and if the seal of the wat development authority has been changed after a facsimile has been imprint on such bond, the facsimile will continue to be sufficient for all purpos

(g) Any resolution authorizing any infrastructure revenue bonds may conta provisions, subject to any agreement with bondholders or noteholders whi may then exist, which agreements shall be part of the contract with the hold thereof, with respect to the pledge of or other use and disposition of amounts the infrastructure revenue debt service fund; the setting aside of reserve func the disposition of any assets of the water development authority; limitations the purpose to which the proceeds of sale of bonds may be applied; t authorization of notes issued in anticipation of the issuance of bonds; agreement of the water development authority to do all things necessary for t authorization, issuance and sale of such bonds in such amounts as may b necessary for the timely retirement of such notes; limitations on the issuance additional bonds; the terms upon which additional bonds may be issued a secured; the refunding of outstanding bonds and the renewal of outstandi notes; the procedures, if any, by which the terms of any contract wi bondholders or noteholders may be amended or abrogated; the amount bonds the holders of which must consent thereto and the manner in which suc consent may be given; and any other matter which in any way affects t security for or protection of the bonds.

(h) In the event that the sum of all reserves pledged to the payment of t bonds is less than the minimum reserve requirements established in a resolution or resolutions authorizing the issuance of the bonds, the chairman the director of the water development authority shall certify, on or before t first day of December of each year, the amount of such deficiency to t governor of the state for inclusion, if the governor shall so elect, of the amou of such deficiency in the budget to be submitted to the next session of t Legislature for appropriation to the water development authority to be pledge for payment of such bonds: Provided, That the Legislature shall not be require to make any appropriations so requested, and the amount of such deficiencie shall not constitute a debt or liability of the state.

(i) Neither the officers or board members of the water development author ty, nor any person executing the infrastructure revenue bonds, shall be liabl personally on the bonds or be subject to any personal liability or accountabilit by reason of the issuance thereof.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–18. Trustee for holders of infrastructure revenue bonds; con tents of trust agreement

(a) Any infrastructure revenue bonds issued by the water development au thority under this article shall be secured by a trust agreement between th water development authority and a corporate trustee, which trustee may be an trust company or banking institution having the powers of a trust compan within this state.

(b) Any trust agreement may pledge or assign the infrastructure revenue debt service fund. Any trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seventeen of this article, and covenants setting forth the duties of the water development authority in respect to the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds, and the custody, safeguarding and application of all moneys. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of the infrastructure debt service fund shall furnish such indemnifying bonds or pledge securities as are required by the water development authority. The trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds and notes. The trust agreement may contain such other provisions as the water development authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as part of the cost of the construction, renovation, repair, improvement or acquisition of a project or infrastructure project.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees

Any holder of infrastructure revenue bonds issued pursuant to this article and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution in the issuance of the bonds, and may enforce and compel the performance of all duties required by this article, pursuant to the trust agreement or resolution, to be performed by the water development authority or any officer thereof.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–20. Infrastructure revenue bonds lawful investments

All infrastructure revenue bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–21. Purchase and cancellation of infrastructure revenue bond

(a) The water development authority, subject to such agreements with nc holders or bondholders as may then exist, shall have the power, from any fu available therefor, to purchase or redeem infrastructure revenue bonds of water development authority.

(b) If the infrastructure revenue bonds are then redeemable, the price of purchase shall not exceed the redemption price then applicable, plus accru interest to the next interest payment date thereon. If the infrastructure rever bonds are not then redeemable, the price of the purchase shall not exceed redemption price applicable on the first date after the purchase upon which bonds become subject to redemption, plus accrued interest to such date. Up purchase or redemption, the bonds shall be canceled.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–22. Refunding revenue bonds

Any infrastructure revenue bonds issued pursuant to the provisions of t article and at any time outstanding may at any time and from time to time refunded by the water development authority by the issuance of its refundi revenue bonds in an amount it deems necessary to refund the principal of t bonds to be refunded, together with any unpaid interest thereon, to prov additional funds for the water development authority to accomplish the purpc of this article, and to pay any premiums and commissions necessary to be p in connection therewith. Any refunding may be effected whether the inf structure revenue bonds to be refunded shall have then matured or sh thereafter mature: Provided, That the holders of any infrastructure reven bonds so to be refunded shall not be compelled without their consent surrender their infrastructure revenue bonds for payment or exchange prior the date on which they are payable or, if they are called for redemption, pri to the date on which they are by their terms subject to redemption. A refunding revenue bonds issued pursuant to this article shall be payable fr the West Virginia infrastructure revenue debt service fund, and shall be subj to the provisions contained in section seventeen of this article, and shall secured in accordance with the provisions of sections seventeen and eighteen this article.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–23. Infrastructure revenue bonds not debt of state, county, m nicipality or any political subdivision

Infrastructure revenue bonds issued pursuant to the provisions of this arti shall not constitute a debt or a pledge of the faith and credit or taxing power this state or of any county, municipality or any other political subdivision this state. The holders or owners thereof shall have no right to have tax levied by the Legislature or the taxing authority of any county, municipality any other political subdivision of this state for the payment of the princip thereof or interest thereon. The bonds shall be payable solely from t

revenues and funds pledged for their payment as authorized by this article. All such bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31–15A–24. Infrastructure revenue bonds exempt from taxation

The exercise of the powers granted to the water development authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is for a public purpose. As the construction, acquisition, repair or renovation of projects or infrastructure projects will constitute the performance of essential governmental functions, the water development authority shall not be required to pay any taxes or assessments upon any project or upon any property acquired or used by the water development authority or upon the income therefrom. The infrastructure revenue bonds and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except estate taxes.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

West's

Annotated Code of West Virginia

Using the Classification and Numbering System of the 1931 Code of West Virginia, as Amended

Chapters 31 to 31E

2008
Cumulative Annual Pocket Part

Replacing 2007 Pocket Part supplementing 2002 Main Volume

Includes laws through the 2008 First Extraordinary Session

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(h) The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys and agents for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

(i) In cases of any vacancy in the office of a voting member, the vacancy shall be filled by the governor. Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of the term.

(j) The governor may remove a member in the case of incompetence, neglect of duty, gross immorality or malfeasance in office, and may declare the member's office vacant and appoint a person for the vacancy as provided in other cases of vacancy.

(k) The secretary of the board shall keep a record of the proceedings of the board and perform any other duties determined appropriate by the board. The treasurer shall be custodian of all funds of the authority and shall be bonded in the amount designated by other members of the board.

Acts 1989, c. 54; Acts 2004, c. 88, eff. 90 days after March 13, 2004.

§ 31-15-6. General powers of authority

Notes of Decisions

Loans 1

1. Loans

West Virginia Industrial Development Authority, has broad discretion; may appraise loan for truck terminal as "industrial development project". 51 W.Va. Op.Atty.Gen. 749 (March 23, 1966) 1966 WL 87471.

§ 31-15-7. Loans to industrial development agencies or enterprises for projects

Notes of Decisions

In general 1

1. In general

Participation in loan by an agency of the federal government reduces local development agency's contribution to a sum less than 10 percent of the cost or estimated cost of industrial development project. 53 W.Va. Op.Atty.Gen. 339 (November 18, 1969) 1969 WL 100574.

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Section
31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.
31-15A-11. Reservation of funds for projects and infrastructure projects.
31-15A-16. Dedication of severance tax proceeds.
31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund.

§ 31–15A–3. West Virginia infrastructure and jobs development council c tinued; members of council; staff of council

(a) The West Virginia infrastructure and jobs development council is hereby contin The council is a governmental instrumentality of the state. The exercise by the council of powers conferred by this article and the carrying out of its purpose and duties shal considered and held to be, and are hereby determined to be, essential governmental funct and for a public purpose.

(b) The council shall consist of eleven members, including the governor or designee, executive director of the housing development fund or his or her designee, the director of division of environmental protection or his or her designee, the director of the econc development authority or his or her designee, the director of the water development autho or his or her designee, the director of the division of health or his or her designee, chairman of the public service commission or his or her designee, and four memb representing the general public: *Provided,* That there shall be at least one mem representing the general public from each congressional district: *Provided, however,* T after the expiration of the term of office of the members first appointed as representative the general public, no more than one member representing the general public may b resident of the same county. The governor shall appoint the public members of the cou who shall serve three-year staggered terms. The commissioner of the division of highw the executive director of the state rail authority, two members of the West Virginia Sen two members of the West Virginia House of Delegates, the chancellor of the higher educa policy commission and the chancellor of the West Virginia council for community technical college education serve as advisory members of the council. The governor s appoint the legislative members of the council: *Provided further,* That no more than thre the legislative members may be of the same political party. The governor shall appoint representatives of the governing boards from a list of three names submitted by e governing board. The advisory members shall be ex officio, nonvoting members of council.

(c) The governor or designee shall serve as chairman and the council shall annually app a vice chairperson and shall appoint a secretary, who need not be a member of the council who shall keep records of its proceedings. Six members of the council shall constitut quorum and the affirmative vote of at least the majority of those members present shall necessary for any action taken by vote of the council. A vacancy in the membership of council does not impair the rights of a quorum by such vote to exercise all the rights perform all the duties of the council.

(d) A member of the council who serves by virtue of his or her office does not rece compensation or reimbursement of expenses for serving as a member. The public memb are reimbursed for actual expenses incurred in the service of the council in a man consistent with guidelines of the travel management office of the department of administ tion.

(e) The council meets at least monthly to review projects and infrastructure proje requesting funding assistance and otherwise to conduct its business and may meet m frequently if necessary. Notwithstanding any other provision of this article to the contra the economic development authority is not subject to council review with regard to any act taken pursuant to the authority established in article fifteen, chapter thirty-one of this co The governor's civil contingent fund is not subject to council review with regard to projects infrastructure projects funded through the governor's civil contingent fund.

(f) The water development authority shall provide office space for the council and ea governmental agency represented on the council shall provide staff support for the council the manner determined appropriate by the council.

(g) The council shall invite to each meeting one or more representatives of the Unit States department of agriculture, rural economic community development, the United Sta economic development agency and the United States army corps of engineers or a

successors thereto. The council shall invite such other appropriate parties as is necessary to effectuate the purposes of this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 2005, 1st Ex. Sess., c. 3, eff. Jan. 29, 2005.

Historical and Statutory Notes

Acts 2005, 1st Ex. Sess., c. 3, rewrote (b); in (c), substituted "The governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson" for "The council shall annually elect one of its members as chairman"; rewrote (d); and made nonsubstantive changes throughout the section. Prior to revision, (b) and (d) read:

"(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council."

"(d) No member of the council who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council."

§ 31–15A–11. Reservation of funds for projects and infrastructure projects

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (*l*), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: *Provided*, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the executive director of the West Virginia development office for review, recommendation and approval regarding infrastructure project funding.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998; Acts 2005, 1st Ex. Sess., c. 3, eff. Jan. 29, 2005.

Historical and Statutory Notes

Acts 2005, 1st Ex. Sess., c. 3, in the last sentence, substituted "executive director of the West Virginia development office" for "council for community and economic development, or its successor".

§ 31–15A–16. Dedication of severance tax proceeds

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax

collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to t credit of the West Virginia infrastructure general obligation debt service fund creat pursuant to section three, article fifteen-b of this chapter: *Provided*, That beginning on t first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dolla of the tax annually collected pursuant to article thirteen-a of this code shall be deposited the credit of the West Virginia infrastructure general obligation debt service fund creat pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (None of the collections from the tax imposed pursuant to section six, article thirteen chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the t imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and t Division of Forestry pursuant to section twenty-a of said article thirteen-a shall rema dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, o thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasur and the water development authority the principal and interest coverage ratio and amount f the following fiscal year on any infrastructure general obligation bonds issued pursuant to t provisions of article fifteen-b of this chapter.

(e) Notwithstanding any provision of this article to the contrary, the tax on coalb methane remitted by the Tax Commissioner for deposit in the West Virginia Infrastructu Fund pursuant to section twenty-a, article thirteen-a, chapter eleven of this code shall distributed as follows: (1) Seventy-five percent of the moneys so deposited shall be distribu ed for infrastructure projects in the various counties of this state in which the coalb methane was produced, and (2) the remaining twenty-five percent of the moneys so deposit shall be distributed equally to the various counties of this state in which no coalbed metha was produced for infrastructure projects. Moneys shall be distributed to each coalb methane producing county in direct proportion to the amount of tax paid by the county usi information provided by the Tax Commissioner as required in section twenty-a, artic thirteen-a, chapter eleven of this code.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days aft March 14, 1998; Acts 2008, c. 213, eff. June 7, 2008.

Historical and Statutory Notes

Acts 2008, c. 213, added subsec. (e).

§ 31–15A–17a. Infrastructure revenue bonds payable from A. James Manchi Fund

Notwithstanding any other provision of this code to the contrary, the Water Developme Authority may issue, in accordance with the provisions of section seventeen of this artic infrastructure revenue bonds payable from the A. James Manchin Fund created by secti nine, article fifteen-a, chapter twenty-two of this code and such other sources as may legally pledged for such purposes other than the West Virginia Infrastructure Revenue De Service Fund created by section seventeen of this article.

Acts 2003, c. 251, eff. 90 days after March 8, 2003; Acts 2005, c. 199, eff. 90 days after April 9, 2005.

ARTICLE 15C

BROADBAND DEPLOYMENT

Section		Section	
31–15C–1.	Legislative findings and purpose.	31–15C–5.	Creation of the Broadband Deplo ment Fund.
31–15C–2.	Definitions.	31–15C–6.	Categorization of areas within sta for broadband deployment pu poses.
31–15C–3.	Broadband Deployment Council established; members of council; administrative support.	31–15C–7.	Retention of outside expert consu tant.
31–15C–4.	Powers and duties of the council generally.		

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 2 OF THE WEST VIRGINIA CODE, AND CHAPTER 22C ARTICLE 2 OF THE 2008 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

July 6, 2009

Natalie E. Tennant

Secretary of State

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

22C–2–1. Definitions.
22C–2–2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
22C–2–3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
22C–2–4. Annual audit.
22C–2–5. Collection of money due to the fund.
22C–2–6. State construction grants program established; special fund.
22C–2–7. Environmental review of funded projects.
22C–2–8. Conflicting provisions.

§ 22C–2–1. Definitions

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant

to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

United States Code Annotated

Water Pollution Prevention and Control,
Generally, see 33 U.S.C.A. § 1251 et seq.
Effluent limitations, see 33 U.S.C.A. § 1311 et seq.
Water Pollution, Waste Treatment Management, grants, see 33 U.S.C.A. § 1281 et seq.

§ 22C–2–2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

Acts 1994, c. 61.

Library References

Environmental Law ⇐216.
Westlaw Topic No. 149E.
C.J.S. Health and Environment §§ 130, 172.

§ 22C–2–3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

Administrative Code References

Program rules, see W. Va. Code St. R. § 47–31–1 et seq.

Library References

Environmental Law ⚷179, 180, 216.
States ⚷127.
Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 172.
C.J.S. States §§ 386 to 387.

§ 22C–2–4. Annual audit

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three of this article.

Acts 1994, c. 61.

Library References

Environmental Law ⚷179, 180, 216.
States ⚷121.
Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 172.
C.J.S. States §§ 322 to 323, 372.

§ 22C–2–5. Collection of money due to the fund

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

Library References

Environmental Law ⇐221.
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 150, 172.

§ 22C–2–6. State construction grants program established; special fund

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section.

Acts 1994, c. 61.

Administrative Code References

Construction grants program rules, see W. Va. Code St. R. § 47–33–1 et seq.

Library References

Environmental Law ⇐180, 217.
States ⇐127.
Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 133, 172.
C.J.S. States §§ 386 to 387.

§ 22C–2–7. Environmental review of funded projects

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be

consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

Library References

Environmental Law ⚷179, 180, 574, 595(3).
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 105 to 106, 111, 113 to 114, 116, 125, 172.

§ 22C–2–8. Conflicting provisions

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.

Acts 1994, c. 61.

Library References

Environmental Law ⚷167, 170, 575.
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 106, 111, 172.

West's

Annotated Code of West Virginia

Using the Classification and Numbering System of the 1931 Code of West Virginia, as Amended

Chapters 22B to 23

2008
Cumulative Annual Pocket Part

Replacing 2007 Pocket Part supplementing 2006 Main Volume

Includes laws through the 2008 First Extraordinary Session

THOMSON WEST

Mat #40748655

will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water facility, stormwater system or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: *Provided*, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

Acts 1994, c. 61; Acts 2008, c. 203, eff. June 5, 2008.

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

22C–2–1. Definitions.
22C–2–5. Collection of money due to the fund.

§ 22C–2–1. Definitions

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the Water Development Authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing str tures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of development of the project, carrying charges incurred before placing the project in servi interest on funds borrowed to finance the project to a date subsequent to the estimated d the project is to be placed in service, necessary expenses incurred in connection with plac the project in service and the funding of accounts and reserves which the authority m require; and

(6) Other items that the Department of Environmental Protection determines to reasonable and necessary.

(c) "Fund" means the State Water Pollution Control Revolving Fund provided for in t article as it may be expanded or modified, from time to time, pursuant to the Clean Wa Act, 33 U.S.C. § 1251, *et seq.*, as amended, the Federal Safe Drinking Water Act 42 U.S. § 300f through § 300j–26, inclusive, as amended, or by the executive order of the Govern issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the Department of Environmental Protection or the agen designated by an order of the Governor as having the primary responsibility for administe ing the fund pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, and t Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j–26, inclusive, as amende or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, distri public service district, commission, banking institution, political subdivision, regional gover mental authority, state government agency, interstate agency or not-for-profit association corporation in West Virginia.

(f) "Project" means any water or wastewater treatment facility located or to be located or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the faciliti delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) this subsection; and

(6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 200

United States Supreme Court

Environmental law,
Clean water, dams, discharge potential, state certification requirement under

Clean Water Act, see S.D. Warren Co. Maine Bd. of Environmental Protectio 2006, 126 S.Ct. 1843.

§ 22C–2–2. Designation of division of environmental protection as state in strumentality for purposes of capitalization agreements with th United States environmental protection agency

United States Supreme Court

Environmental law,
Clean water, dams, discharge potential, state certification requirement under

Clean Water Act, see S.D. Warren Co. Maine Bd. of Environmental Protectio 2006, 126 S.Ct. 1843.

§ 22C–2–5. Collection of money due to the fund

(a) In order to ensure the timely payment of all sums due and owing to the fund under revolving fund loan agreement between the state and a local entity, and notwithstanding an

provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(b) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision. The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

(c) For loans made for projects defined in subdivision (6), subsection (f), section one of this article, at the direction of the Department of Environmental Protection, the authority shall take a security or other interest in real or personal property with the right to foreclose upon a default to secure loans made from the fund.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 2007.

§ 22C–2–7. Environmental review of funded projects

United States Supreme Court

Environmental law,
Clean water, dams, discharge potential, state certification requirement under Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.

ARTICLE 4

COUNTY AND REGIONAL SOLID WASTE AUTHORITIES

Section
22C–4–10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.

§ 22C–4–10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful

Building at a cost of $3,250., including 2 storage tanks and the bidder is to remove the old furnace, contract awarded to Community Oil Company, Charles Town, W. Va.

In re: JANE F. ROCKENBAUGH, NOTARY PUBLIC

The bond of Jane F. Rockenbaugh, who was duly commissioned a Notary Public in and for t County for a period of ten years from June 19th, 1972, was this day before the Court, said bond being in a penalty of $250.00 with William F. Musser, her surety, which bond is this day approve by the Court and ordered recorded, the said Jane F. Rockenbaugh, Notary Public as aforesaid, hav taken and subscribed the oath required by law.

In re: APPLICATION OF REBA WILT, NOTARY PUBLIC

Upon the application of Reba Wilt for appointment as notary public in and for the Coun of Jefferson, it was shown to the satisfaction of this court that said applicant is a resident o the County from which she seeks appointment, that she is competent to perform the duties of such office, and that she is a person of good moral character.

On motion of Henry M. Snyder, Jr., Seconded by Charles W. Whittington, and duly carrie the County Court awarded the liability fire and theft insurance coverage on the trashmasher compactor at the Landfill to Moore Insurance Company at a cost of $1.00 per $100.00 value, insured 80% or approximately $400.00 per year.

In re: HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

Peter Chakmakian came before the Court to discuss the petition of the Harpers Ferry-Bo Public Service District, and after stating that there was no public opposition to the project, H M. Snyder, Jr. made a motion to approve the establishing of the Harpers Ferry-Bolivar Public Ser District. Said motion was seconded by Charles W. Whittington and duly carried. ORDER FOLLOWS:

ORDER CREATING HARPERS-FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

This matter came on for public hearing this 29th day of June, 1972, for the purposes o hearing public testimony on the feasibility of the creation of a public service district under t provisions of 16-13A-1 et. seq. of the West Virginia Code of 1931, as amended. It appearing to Court that a Petition duly signed by 128 persons declaring that they are legal voters, residents owners of real property within a certain area in the Harpers Ferry Magisterial District was file with the Clerk of this Court on June 8, 1972, and it further appearing that two(2) attested copi of Resolutions, one from the Town of Harpers Ferry and one from the Town of Bolivar consenting t included within the territory of the proposed public service district and said Resolutions were adopted by the respective Town Councils and it further appearing to the Court that a notice of hearing set for this date was published on June 17, 1972, in the Martinsburg Journal, a newspape general circulation in Jefferson County and that said ad was published more than ten (10) days p to the date of the said hearing and it further appearing to the Court that notice of the public has been posted in at least five (5) conspicuous places in the proposed territory of the public service district and that the posted notices were posted nor less than ten (10) days prior to th ing date, the Court then proceeded to hear testimony and evidence on the feasibility of the crea of the said public service district.

Upon consideration of the testimony and evidence produced and tendered before the Cour the Court accordingly finds that it is feasible to create a public service district in the area produced by the petitioners and that it is further determined after consideration that the construction, maintenance, operations and improvements by such public service district will be conducive to the preservation of the public health, comford and convenience in the territory propos

Therefore it is ordered and adjudged that the public service district be created in Jefferson County under the provisions of 16-13A-1 et. seq. of the West Virginia Code of 1931, as amended, to encompass and include the following territory:

1. All that certain land within the corporate limits of the Town of Harpers Ferry and within the corporate limits of the Town of Bolivar, said territory to be co-extensive with the corporate limits of both towns.

2. All that certain land beginning at a point 1000 ft. from the end of the Second Bolivar Charter Boundary Line; thence by a perpendicular on a new line south 36 deg. E. to the southern bank of the Shenandoah River; thence with south bank of Shenandoah River in a southwesterly direction to the intersection therewith by the Third Bolivar Charter Boundary Line reversed, extended; thence with said reversed extensions of the Third Bolivar Boundary Line N 45 degrees 15' west to the end of the aforementioned Bolivar Charter Second Boundary Line; thence with said Second Bolivar Charter Boundary Line reversed, N 54 degrees E 1000 feet to the point of beginning.

And it is further ordered and adjudged that the public service district shall be known as "HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT", and that it shall possess the powers and privileges granted to public service districts by virtue of the provisions of the West Virginia Code.

The Clerk shall enter this order as of the day and date first above written.

On motion of Charles W. Whittington, seconded by Henry M. Snyder, Jr. and duly passed, the Court approved the appointment of Bradley Nash, Mayor of Harpers Ferry to a 6-year term, Mack Robertson, Mayor of Bolivar to a 4-year term, and J. Thomas Mentzer of Harpers Ferry to a 2-year term, as Members of the Board of the HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT as per following Order:

ORDER

It appearing to the Court this 29th day of June, 1972 that it has adopted an order creating the HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT and it further appearing to the Court that the territory included in the public service district does not contain a city or incorporated town having a population in excess of 3,000 and it further appearing to the Court that it has the authority under these circumstances to appoint members of the public service board and the Court taking note that the West Virginia Code provides that three (3) members be appointed, all members residing within the public service district, it is accordingly ordered that Bradley Nash, Mayor of Harpers Ferry, is appointed a member of the public service board for a term of six(6) years, effective July 1, 1972, and that Mack Robertson, Mayor of Bolivar, is appointed a member of the public service board for a term of four (4) years effective July 1, 1972, and that J. Thomas Mentzer, Harpers Ferry, is appointed a member of the public service board for a term of two (2) years, effective July 1, 1972.

The Clerk shall enter this order as of the day and date first above written.

The following miscellaneous claims were this day examined by the Court and ordered paid:

Miscellaneous:		Miscellaneous-continued:	
Gail E. Harclerode	$103.37	Mary L. Riggleman	$ 40.72
Marie Trussell	144.28	Roma L. Henry	140.37
Jerome Radosh	282.34	Charlotte P. Moyers	131.88
John E. Ott	118.79	Frances M. Banks	137.82
Sarah W. Humston	144.58	Lucy F. Allen	134.80
Erma S. Hough	158.01	Rowlen E. Moreland	148.82
Virginia G. Ruble	132.41	Charlotte A. Gageby	156.09
Alice V. Pifer	133.44	Thelma M. Chapman	83.11

Miscellaneous-continued:

Philip Steorts	$213.05	Helen P. Jones	$135.02
Kathryn L. Trussell	234.71	Mary R. Bordier	307.36
Dora V. Watson	143.99	Harry L. Shirley	102.70
Grover S. Poston	81.71	Howard S. Koonce	204.95
Juanita S. Horn	112.50	Robert W. McCormick	129.09
Clara D. Banks	120.40	Beatrice Moreland	103.68
Sharon L. Smallwood	268.39	Jess G. Hunter	162.43
Cecil Boyd	174.14	Sarah B. Turner	54.18
Harry Jenkins, Jr.	131.44	G. R. Crim	171.66
Chas. W. Whittington	164.29	E. E. Henkle	152.48
Henry M. Snyder, Jr.	144.72	Dianne R. Alvarez	120.43
Larry Thatcher	146.73	Allen N. Cain	144.95
General Telephone Co.	16.35	J. C. Penney Co.	7.84
Evans Business Services, Inc.	192.47	Casto & Harris, Inc.	252.63
The Geo. D. Barnard Co.	170.24	Baltimore Stationery	14.35
The Michie Company	65.00	Pifer Office Supply, Inc.	933.10
The Hagerstown Equipment Co.	7.65	Peoples Supply Farm Mach., Inc.	2.52
Business Services - East	229.70	Charles R. Atherton, C.E.	172.20
Jefferson Asphalt Products Co.	549.00	The Independent	25.92
Douglas S. Rockwell, Atty.	50.00	Joseph R. Howell, Jr.	1.00
Life of Virginia	1470.66	Washington, Alexander & Cooke	200.00
Independent Fire Co., Inc.	10.00	Annandale United Methodist Church	140.00
Howard P. Backus	4.08	R. E. Moreland, Sheriff	28.20
C. Manning Smith, Postmaster	65.80	Mary L. Riggleman, Cir.Clk.	21.80
E. F. Rhodes, Deputy Sheriff	8.00	John E. Ott, Co. Clk.	99.17
E. L. McDonald, Jr., Agency	280.00	Charles Town General Hospital	108.95
R. E. Moreland, Sheriff	3.60	Jeff.Co.Civilian Defense Org.	200.00
E. F. Rhodes, Deputy Sheriff	13.11	General Telephone Co.	34.24
Marvin Dodson Plumbing & Heating	6.50	Casto & Harris, Inc.	26.25
Evans Business Services, Inc.	84.45	George E. Whittington	2.00

Fine Fund:

Merle E. Alger, J.P.	304.00
E. W. Day, J.P.	404.00

On rising, Court adjourned to meet again on Thursday morning next at 9:30 o'clock.

H M Snyder Jr
President Pro Tem

REGULAR TERM JULY 6th, 1972

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

At a Regular Term of the County Court of said County and State, begun and held at the Court House thereof, on Thursday, July 6th, 1972, beginning at 9:30 o'clock A.M.

PRESENT: Chas. W. Whittington, Edward E. Henkle, and
Henry M. Snyder, Jr., Commissioners.

In re: PRESIDENT PRO TEM

On motion of Chas. W. Whittington, seconded by Edward E. Henkle, duly carried, Henry M. Snyder, Jr. is this day, July 6th, 1972, named President pro tem of the County Court.

In re: CHARLES J. W. SMITH, COUNTY COMMISSIONER

Charles J. W. Smith, who was on June 15th, 1972, appointed by the County Court, County Commissioner, Charles Town District, to serve until the next General Election, this day appeared before the said Court and took the oath of office as required by law.

On motion of E. E. Henkle, seconded by Charles W. Whittington and duly passed, the Court approved the official seal of the Jefferson County Planning Commission, as presented.

In re: COMMITTEE FOR EMMA J. ROPER

The Bank of Charles Town is this day appointed Committee for Emma J. Roper, incompetent, notice having been served on the said Emma J. Roper on June 21st, 1972 that this appointment would be made on this date.

In re: TAX DISTRICTS OF JEFFERSON COUNTY

The Tax Districts for Jefferson County will remain the same as the Magisterial Districts that existed on January 1st, 1969.

In re: MEMBERS OF THE PUBLIC SERVICE BOARD

Bradley D. Nash, Mack Robertson and J. Thomas Mentzer, who were appointed by the County Court on June 29th, 1972, Members of the Board of the Harpers Ferry-Bolivar Public Service District, were duly sworn in on June 30th by John E. Ott, Clerk of County Court. Said oaths of office were this day presented and approved by the County Court.

The following miscellaneous claims were this day examined by the Court and ordered paid:

Miscellaneous:		Miscellaneous-continued:	
W.Va,Public Employees Ret.System	$1240.73	Bank of Charles Town	$2359.30
Same	531.84	State Tax Commissioner	338.95
Social Security Contribution Fund		Alban Tractor Co., Inc.	978.00
Western Auto Associate Store	10.64	The Marquis Co.	47.70
The Whitmore Lumber Co.	4.50	Jefferson Tobacco Co.	55.15
Clendening Motors, Inc.	255.86	Pifer Office Supply, Inc.	10.00
W. Va. State Industries	14.67	Valley Hardware Co.	10.60
Potomac Edison	21.32	General Telephone Co.	16.45
Hankey's Radio, Inc.	99.45	West Publishing Co.	14.00
Business Services - East	82.80	The Independent	12.74
Berkeley Farmers Dairy, Inc.	96.16	Lucy S. Wysong	18.00
The Manbeck Bread Co.	26.02	L. Walter Fix, M.D.	50.00

Miscellaneous-continued:

Virginia Louise Tabb	$ 47.40	Natalie G. Parks	$ 55.2
Betty Jo Wagoner	26.97	J. E. Saville	44.4
Shirley R. Riley	48.60	R. E. Moreland, Sheriff	26.1
Richard Smith	2.00	Caldwell-Sites Company	115.0
Lord and Lord	259.82	Circle Service Station	276.9
Robert Carr	47.50		

Fine Fund:

General County Fund	325.95
William F. Orr, J.P.	100.00

Dog Tax Fund:

Harry Puster	15.00
Mrs. Gilbert H. Hendricks	84.00
Mrs. Frank Cook	36.00
Virginia F. Burns	10.00
William M. Baker	18.00
Cecil Boyd	168.45

On rising, Court adjourned to meet again on Thursday morning next at 9:30 o'cloc

President

A TRUE COPY
ATTEST: JENNIFER S. MAGHAN
CLERK, COUNTY COMMISSION
JEFFERSON COUNTY, WV
BY Katina S. Boomer
DEPUTY CLERK

In re: PUBLIC COMMENT

No public comment given.

In re: KENDIG KEAST UPDATE/ORDINANCE REWRITE DISCUSSION

Commissioner R. Morgan discussed the request for the Farm Bureau to schedule a 45 minute meeting after it is received in writing.

The Commission agreed to hold a work session on Wednesday, February 28, 2007 at 9:00 a.m. in the County Commission Meeting Room, Jefferson County Courthouse, 100 E. Washington Street, Charles Town, West Virginia 25414. The purpose of the work session is to review and amend the Draft Subdivision Ordinance as submitted by Kendig Keast Collaborative, Article 1, Article 2, Article 3, Article 4, Article 6, Article 8 with special emphasis on Article 5.

In re: JANET STINE - EASTERN PANHANDLE CONSERVATION DISTRICT - BUDGET REQUEST

Janet Stine appeared before the Commission to request funding in the amount of $10,000 for the Eastern Panhandle Conservation District. The Commission agreed to discuss this request during budget deliberation.

In re: MICHELE GOLDMAN, RN - EASTERN PANHANDLE FREE CLINIC - BUDGET REQUEST

Michele Goldman, RN appeared before the Commission to request funding in the amount of $12,000 for the Eastern Panhandle Free Clinic. The Commission agreed to discuss this request during budget deliberation.

The Commission took a 10 minute break at 10:25 a.m.

In re: PROCEDURAL MOTION

Motion by Manuel, second by F. Morgan to recess from Regular Session to convene as a Board of Review and Equalization. Motion carried.

REGULAR TERM: (Board of Review and Equalization)

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

At a session of the Board of Review and Equalization, continued and held at the Jefferson County Courthouse thereof on Thursday, February 15, 2007 beginning at 10:35 o'clock a.m.

PRESENT: Frances B. Morgan, President
Gregory A. Corliss; Dale C. Manuel;
A.M.S. (Rusty) Morgan, III; James Surkamp, Commissioners

In re: CONTINUED APPLICATION FOR ASSESSMENT REVIEW - MICKEY DUNCAN

The Board revisited the Application for Assessment Review by Mickey Duncan on Map 13, Parcels 32, 33, 34 and 96 in Middleway District. Mr. Duncan provided the Board with the previously requested correspondence from the Health Department certifying that a well cannot be drilled on the property.

Motion by F. Morgan, second by Manuel to refer the documentation to the Assessor's office for review and a recommendation. Motion carried.

Frances B. Morgan

FRANCES B. MORGAN, COMMISSION PRESIDENT

In re: PROCEDURAL MOTION

Motion by Manuel, second by F. Morgan to recess as the Board of Review and Equalization and reconvene into Regular Session at 10:45 a.m. Motion carried.

In re: EXECUTIVE SESSION TO DISCUSS THE POSSIBLE PURCHASE OF PROPERTY AND ASSOCIATED LEGAL AND CONTRACTUAL MATTERS

The Commission agreed to discuss this matter under the 11:45 a.m. appointment with Stephanie Grove - Legal Update and Report.

In re: REQUISITION OVERDRAFT FROM THE BOARD OF EDUCATION - IMPACT FEES FOR WASHINGTON HIGH SCHOOL

F. Mark Schiavone, Impact Fee Coordinator appeared before the Commission to discuss the requisition overdraft from the Board of Education. Dr. Schiavone provided a copy of the Impact Fee Coordinator's Opinion on Funding of the New Washington High School by Impact Fees. Leslie Smith, County Administrator informed the Commission of the meeting with the Board of Education on April 4, 2007.

The Commission agreed to review the Coordinator's opinion.

In re: TOM TRUMBLE - ANIMAL WELFARE SOCIETY - BUDGET REQUEST

Tom Trumble appeared before the Commission to request funding in the amount of $16,000 for the Animal Welfare Society. The Commission agreed to discuss this during budget deliberation.

In re: JENNIFER S. MAGHAN - COUNTY CLERK'S REPORT

Jennifer S. Maghan, County Clerk, appeared before the Commission to give the County Clerk's report. Ms. Maghan informed the Commission that the State of WV is currently at the mileage rate of 0.445 per mile and the Federal Government is currently at 0.485 per mile. Motion by R. Morgan, second by Surkamp to use the Federal Government mileage rate at 0.485. Motion carried.

Ms. Maghan also reported that employees in Jefferson County are not having the proper amount of State taxes taken out of bi-weekly checks. Payroll was set up to withhold taxes according to the "Annual Payroll Period" for all Employees. Most county employees fall under the "Biweekly Payroll Period". Many employees find that they owe State Taxes at the end of the year because they are not meeting the state tax liability. Ms. Maghan informed the Commission that salary employees are not affected but hourly employees are. She advised the Commission that new WV/IT -104 Employee Withholding Exemption Certificates will be distributed to each County employee with the WV Tax Table next week. Each employee can determine the amount they would like deducted from their paycheck to meet the WV State Tax liability.

In re: KATHLEEN V. WINDLE - NEW HOPEWELL CENTER FOR THE ARTS - MIRROR REMOVAL

Motion by Surkamp, second by Manuel to permit the removal of the mirrors and to direct the County Administrator to review the contract and to make sure that there is no cost to the County Commission. Also, make sure the mirrors are removed in a timely manner. Motion carried.

In re: PLANNING COMMISSION REMOVAL PROCEDURES ORDINANCE

Motion by Manuel to adopt the Removal Ordinance as prepared by legal counsel. Motion failed due to lack of a second.

Motion by Surkamp, second by R. Morgan to approve the Planning Commission Removal Ordinance that was discussed at the Public Hearing on February 1, 2007.

Motion by Manuel to place the Planning Commission Removal Procedures Ordinance in a batch of various ordinances being considered. Motion failed due to the lack of a second.

Original motion by Surkamp, second by R. Morgan to approve the Planning Commission Removal Procedures Ordinance that was discussed at the Public Hearing on February 1, 2007 and that the Ordinance be effective immediately. Motion passed by a 4-1 vote. Commissioner Manuel voted no. Commissioner Manuel commented that he supports the Planning Commission Removal Procedures Ordinance that was prepared by County Legal Counsel.

In re: KELLIE BOLES - ANNUAL REPORT FOR FARMLAND PROTECTION AND THE AGRICULTURAL DEVELOPMENT OFFICE

Kellie Boles appeared before the Commission and presented the Annual Report for the Farmland Protection and the Agricultural Development Office.

In re: ELIZABETH BLAKE AND ROBERT HARDY - BOLIVAR REGIONAL PLANNING GROUP

Elizabeth Blake appeared before the Commission to advise them that the Town Council of Bolivar has appointed her to represent the Town Bolivar for any regional planning group which the County Commission may form.

In re: APPOINTMENT TO THE HARPERS FERRY/BOLIVAR PUBLIC SERVICE DISTRICT

Robert Hardy appeared before the Commission and informed the Commission that he would be interested in being reappointed to the Harpers Ferry/Bolivar Public Service District for another 6 year term. Motion by Manuel, second by Surkamp to reappoint Robert Hardy to the Harpers Ferry/Bolivar Public Service District for a 6 year term ending June 30, 2012. Motion carried.

In re: STEPHANIE GROVE - LEGAL UPDATE AND REPORT

Stephanie Grove, Assistant Prosecuting Attorney appeared before the Commission to give legal update and report. Ms. Grove informed the Commission that she had received a letter from SHHPO and it has been forwarded to Circuit Judge Steptoe. She informed the Commission that she felt that the Injunction against the Jail could be lifted now.

In re: EXECUTIVE SESSION - LITIGATION

Motion by R. Morgan, second by Manuel to enter Executive Session. Motion carried.

Motion by R. Morgan, second by Manuel to return to Regular Session. Motion carried.

The Commission took a lunch break and will return at 1:30 p.m. sitting as a Board of Review and Equalization.

In re: PROCEDURAL MOTION

Motion by R. Morgan, second by Manuel to recess as the Board of Review and Equalization and reconvene into Regular Session at 2:45 p.m. Motion carried.

REGULAR TERM: (Board of Review and Equalization)

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

At a session of the Board of Review and Equalization, continued and held at the Courthouse thereof on Thursday, February 15, 2007, beginning at 1:30 p.m.

PRESENT: Frances B. Morgan, President;
James Surkamp; AMS (Rusty) Morgan, III
Dale Manuel; Gregory A. Corliss, Commissioners

In re: APPLICATION FOR ASSESSMENT REVIEW - ROBERT & MARTHA RIZZO

A hearing was conducted on an appeal by Robert & Martha Rizzo on Map 7A, Parcel 38 in Shepherdstown District.

After sworn testimony and presentation of exhibits, motion by Manuel, second by Corliss to reduce the value on Map 7A, Parcel 38 in Shepherdstown District to $235,000. Motion carried.

In re: APPLICATION FOR ASSESSMENT REVIEW - MARSHA YOUNG

A hearing was conducted on an appeal by Marsha Young on Map 7A, Parcel 12 in Shepherdstown District.

After sworn testimony and presentation of exhibits, motion by R. Morgan, second by Manuel to reduce the value on Map 7A, Parcel 12 in Shepherdstown District to $260,000. Motion carried.

In re: APPLICATION FOR ASSESSMENT REVIEW - JOHN POLAK

A hearing was conducted on an appeal by John Polak on Map 7A, Parcel 22 in Shepherdstown District.

After sworn testimony and presentation of exhibits, motion by Manuel, second by Surkamp to reduce the value on Map 7A, Parcel 22 in Shepherdstown District to $255,000. Motion carried.

In re: APPLICATION FOR ASSESSMENT REVIEW - WEST END

Braun Hamstead, counsel for West End, appeared before the Commission concerning the application for assessment review for West End. Mr. Hamstead informed the Commission that after discussion with the Assessor's office his clients were agreeable to the resolution worked out with the Assessor's office. Motion by Manuel, second by R. Manuel to accept the proposal worked out between the Assessor's office and West End. Motion carried.

In re: CONTINUED APPLICATION FOR ASSESSMENT REVIEW - MICKEY DUNCAN

The Board revisited the Application for Assessment Review by Mickey Duncan on Map 13, Parcels 32, 33, 34 and 96 in Middleway District. Mr. Duncan previously provided the Board with the correspondence from the Health Department certifying that a well cannot be drilled on the property. After discussion, motion by Manuel, second by Surkamp to reduce the appraised values on Map 13, Parcels 32, 33, 34 and 96 in Middleway District to $2,000 for each parcel. Motion carried.

The Board of Review and Equalization recessed until Tuesday, February 20, 2007, at 9:00 a.m.

Frances B. Morgan

FRANCES B. MORGAN, COMMISSION PRESIDENT

In re: PROCEDURAL MOTION

Motion by Manuel, second by F. Morgan to recess as the Board of Review and Equalization and reconvene into Regular Session at 2:45 p.m. Motion carried.

In re: DISCUSS/TAKE ACTION ON SUGGESTED DPZE REORGANIZATION

The Commission agreed to place this agenda item on next week's agenda.

In re: REQUEST WRITTEN RECOMMENDATIONS TO COUNTY COMMISSION FROM DPZE PRIOR TO KENDIG KEAST VISIT THAT INCLUDE STORM WATER MANAGEMENT RECOMMENDATIONS IN DRAFT OF SUBDIVISION ORDINANCES

The Commission agreed to place this agenda item on next week's agenda. The Commission directed that the County Administrator send an email to remind Roger Goodwin, Chief County Engineer.

In re: FOLLOW UP ON PREVIOUS COMMISSION REQUEST TO DPZE TO COMMENT ON STORM WATER PROBLEMS AT CARRIAGE PARK, THAT PROPERTY OWNERS ATTRIBUTE TO SHERIDAN CONSTRUCTION

Leslie Smith, County Administrator handed out and update to the Commission received from Roger Goodwin, Chief County Engineer updating the information that was in the County Commission packet.

In re: APPOINTMENT TO THE ENHANCED 911 BOARD

Motion by R. Morgan, second by Manuel to reappoint George B. Stebbins, Jr. To the Jefferson County Enhanced 911 Board for a 3 year term ending September 1, 2009. Motion carried.

In re: APPROVAL OF EMPLOYMENT - DEBORAH PARK - PART-TIME WORTHLESS CHECK DEPUTY CLERK

Motion by Manuel, second by R. Morgan to approve the employment of Deborah Park as a part-time Worthless Check Deputy Clerk. Motion carried.

In re: SOUTH JEFFERSON RURITAN FIRE SUB-STATION - REQUEST FOR LETTER OF SUPPORT

The Commission by consensus directed that the County Administrator send a letter of support to the South Jefferson Ruritan for a Fire Sub-Station in Middleway.

In re: JEFFERSON COUNTY CHAMBER OF COMMERCE - LEADERSHIP JEFFERSON - REQUEST TO USE LIBRARY MEETING ROOM - MARCH 14, 2007

The Commission by consensus approved the request received from the Jefferson County Chamber of Commerce to use the Library Meeting Room on March 14, 2007 for Leadership Jefferson.

In re: CORRESPONDENCE FROM BRENDA HOOPER - REQUEST FOR EXTENSION OF DEADLINE FOR HEARING BEFORE BOARD OF REVIEW AND EQUALIZATION

The Commission by consensus directed that the County Administrator send a letter to Brenda Hooper and to inform her that they understand her concern but the Commission can not extend the deadline for the Board of Review and Equalization.

In re: KERMIT SHIELDS - REQUEST FOR BUILDING PERMIT REFUND

Motion by R. Morgan, second by Manuel to approve the request for a building permit refund in the amount of $88.40. Motion carried.

In re: DISCUSS BEN VIEW CIRCUIT COURT DECISION AND WHAT TO DO

The Commission reported that this agenda item was discussed in Executive Session.

In re: LETTER TO GOVERNOR EXPRESSING OUR CONCERN OVER UNREASONABLE TAX INCREASES AFFECTING NEARLY EVERYONE IN JEFFERSON COUNTY BUT ESPECIALLY THOSE ON FIXED INCOMES AND RETIRED - LETTER TO GOVERNOR EXPRESSING DISSATISFACTION WITH FORM FOR APPLICATION FOR REVIEW OF PROPERTY ASSESSMENT - LETTER TO OUR LEGISLATORS ASKING THEM TO USE ALL OF THEIR COLLECTIVE AUTHORITY TO BRING AID TO OUR CITIZENS SUFFERING UNDER RUN AWAY TAXATION

The Commission discussed agenda items New Business 14, 15 and 16. After discussion, Commissioner Surkamp agreed to prepare a draft letter to be sent to the Governor regarding these issues and Commissioner Manuel agreed to work with the Assessor. Commissioner R. Morgan agreed to call Senator Yoder to discuss Taxation.

Commissioner Surkamp discussed the Comcast packet.

Commissioner Manuel discussed Impact Fee changes and asked if legal counsel has provided a report and asks if the Impact Fee changes weakens any further litigation that the Jefferson County Commission may have.

In re: QUESTION LEGALITY OF PSD SEWER USE ORDINANCE'S REQUIRING OWNERS OF SEPTIC SYSTEMS TO GET A PERMIT FROM THE PDS. THIS IS JURISDICTION OF THE ENVIRONMENTAL HEALTH DEPARTMENT UNDER STATE LAW

The Commission agreed to place this agenda item on next week's agenda.

In re: REQUEST BY MARCH 10 DPZE WRITTEN RECOMMENDATIONS FOR BETTER APPROVAL PROCESS FOR NON-AG BUSINESS PROPOSALS

The Commission agreed to place this agenda item on next week's agenda.

In re: REQUEST TO ASSESSOR'S OFFICE FOR CONTRACTED SERVICE FOR DIGITAL TAX MAPS (W/O OWNER IDENTITY) TO SUCCESSFULLY PROCEED AND COMPLETE ZONING/SUBDIVISION ORDINANCE RE-WRITE

The Commission agreed to place this agenda item on next week's agenda.

A TRUE COPY
ATTEST: JENNIFER S. MAGHAN
CLERK, COUNTY COMMISSION
JEFFERSON COUNTY, WV
BY Patricia A. Brooner
DEPUTY CLERK

Law order BOOK DD

Correspondence received from the Association of Counties concerning membership dues.

Upon rising, the Commission recessed until Thursday morning next beginning at 10:00 o'clock a.m.

PRESIDENT

REGULAR TERM:

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

At a Regular Term of the County Commission of said County and State continued and held at the Courthouse thereof on Thursday, July 1, 2004, beginning at 10:00 o'clock a.m.

PRESENT: Al Hooper, President;
James G. Knode; Greg Corliss;
Rusty Morgan; Jane M. Tabb; Commissioners

In re: PLEDGE OF ALLEGIANCE
Commissioner Hooper conducted the Pledge of Allegiance.

In re: DISPENSE WITH READING OF MINUTES
Motion by Corliss, second by Morgan to accept the amendments to the Public Hearing Minutes held on June 9, 2004. Motion carried.
Motion by Knode, second by Tabb to dispense with the reading of the Minutes for the meeting held on Thursday, June 24, 2004, and to approve the Minutes as amended. Motion carried.

In re: APPROVAL OF PURCHASE ORDERS
Motion by Knode, second by Morgan to approve the following Purchase Orders for the Week of June 28, 2004, totaling $5,570.92: 40208, 40286, 40346, 40648, 40349, 40352, 40353, 40354, 40256, and 40199. Motion carried.

In re: JEFFERSON COUNTY LEASH LAW ORDINANCE
The Commission discussed the proposed Jefferson County Leash Law Ordinance. The Commission agreed to discuss the matter further in their work session.

In re: DEPARTMENT OF PLANNING, ZONING AND ENGINEERING ACTIVITY REPORT
Paul Raco appeared before the Commission give the weekly activity report for the Department of Planning, Zoning and Engineering.

In re: MARK SCHIAVONE - IMPACT FEE AMENDMENTS CONTINUED FROM 6/24/04
Mark Schiavone, Impact Fee Coordinator, appeared before the Commission to continue the discussion on the proposed Impact Fee Procedures Ordinance Amendments. After discussion, the Commission agreed to review the proposed amendments and to put the matter on the agenda next week for action.

In re: APPOINTMENT TO THE FARMLAND PROTECTION BOARD
The Commission agreed to table the appointment to the Farmland Protection Board for another week.

In re: APPOINTMENT TO REGION 9 - EASTERN PANHANDLE REGIONAL PLANNING AND DEVELOPMENT COUNCIL
After discussion, the Commission agreed to advertise for the appointment to Region 9 Eastern Panhandle Regional Planning and Development Council.

In re: APPOINTMENT TO THE SOLID WASTE AUTHORITY

Motion by Morgan, second by Tabb to reappoint Carl Wiley to the Solid Waste Authority for a 4-year term ending June 30, 2008. Motion carried.

In re: JANE PETERS - DEVELOPMENT AUTHORITY - TRANSFER OF PROPERTY

Jane Peter, Executive Director of the Development Authority, appeared before the Commission to request that the Commission approve the transfer of 22 acres in the Burr Industrial Park to the Jefferson County Development Authority. The Commission broke from this matter in order to conduct other time appointed business. The Commission returned to this matter at 11:45 a.m. After discussion, motion by Tabb to transfer the 22 acres to the Jefferson County Development Authority as requested. After discussion, Commissioner Tabb withdrew the motion. The Commission agreed to review the request for property transfer and put the matter back on the agenda next week.

In re: SMALL CITIES BLOCK GRANT PUBLIC HEARING - HOME REHABILITATION HUD LOAN/GRANT PROGRAM APPLICATION

The Commission conducted a Public Hearing to obtain views and comments of residents concerning the proposed application for a Home Rehabilitation Loan/Grant Program from HUD. Cheryl Moyer and Karen Hoff, from Telamon, appeared before the Commission to explain the program. Public comment was made from Renny Smith, Paul Burke, and Jane Bowers. After discussion, motion by Hooper, second by Morgan to approve the grant application for the Home Rehabilitation Loan/Grant Program from HUD as presented by Telamon. Motion carried.

In re: STEPHEN NARDI - RECREATIONAL DESIGN CORPORATION - BUSINESS PROPOSAL FOR LOCATION OF SPORTS AND LEISURE PROJECTS

Stephen Nardi, from the Recreation Design Corporation, appeared before the Commission to discuss his business proposal for locating one of his sports and leisure projects in Jefferson County. The Commission took no action on the matter.

The Commission recessed at 12:30 p.m.
The Commission reconvened at 1:45 p.m.

In re: APPOINTMENT TO THE BOARD OF HEALTH

Motion by Corliss, second by Tabb to appoint Katrina Johnson to the Board of Health for a 5-year term ending June 30, 2009. Motion carried.

In re: APPOINTMENT TO THE HARPERS FERRY/BOLIVAR PUBLIC SERVICE DISTRICT

Motion by Tabb, second by Knode to reappoint Mayor James A. Addy to the Harpers Ferry/Bolivar Public Service District for a 6-year term ending June 30, 2010. Motion carried.

In re: APPOINTMENT TO THE PARKS AND RECREATION COMMISSION

Motion by Knode, second by Tabb to reappoint Michael McDonald and Thomas Diehl to the Parks and Recreation Commission for 3-year terms ending June 30, 2007 and to leave the other 2 vacancies on the Parks and Recreation Commission open for future appointment. Motion carried.

In re: APPOINTMENT TO THE JEFFERSON COUNTY AMBULANCE AUTHORITY

The Commission received no applications for the appointment to the Ambulance Authority and agreed to keep the matter on the agenda for next week.

In re: FIRE COMPANY CONTRACTS

Motion by Tabb, second by Corliss to approve the Fire Company Contracts for Fiscal Year 2005 in the amount of $7,500 for each of the five fire companies. Motion carried.

In re: ESTATE OF LAWRENCE A. JACOBS - WILL IN SOLEMN FORM CONTINUED

The Commission took up a previously continued hearing for the petition for Probate of Will in Solemn Form for the Estate of Lawrence A. Jacobs, deceased. John C. Skinner, Jr., counsel for the Respondent, was present. Upon request from David A. Camilletti, Counsel for the Petitioner, and having no objections from John C. Skinner, Jr., motion by Morgan, Second by Tabb to continue the Hearing for the petition for Probate of Will in

Solemn Form for the Estate of Lawrence A. Jacobs, deceased for at least 60 days. Motion carried.

Terry Courtright informed the Commission of a Solid Waste Authority Board Meeting on July 8, 2004, at 7:00 p.m. with Waste Management and updated the Commission on the Transfer Station.

The County Administrator informed the Commission of a Planning Commission appointment next week.

The County Administrator informed the Commission of correspondence received from the Fire and Rescue Association concerning the VLT allocation.

Commissioner Tabb reported on Air Quality.

Commissioner Tabb reported on a meeting concerning financing farmland protection.

Commissioner Hooper reported on a Water Advisory Committee meeting.

Commissioner Corliss reported on a meeting to discuss implementation of Impact Fees for Fire and Rescue.

The Commission received the following information:

Reminder Courthouse is closed Monday, July 5, 2004 for Independence Day.

Appointment to be made to the Planning Commission on July 8, 2004.

Correspondence received from the Property Safety Enforcement Agency concerning the Pulse property.

Correspondence received from the Fire and Rescue Association concerning Fiscal Year 2005 VLT Funds Disbursement.

Correspondence received from Region 9 concerning Fiscal Year 2005 Local Assessment Invoice.

Correspondence received from the West Virginia Development Office concerning Fall 2004 Small Cities Block Grant Training.

Correspondence received from the State Auditor concerning Senate Bill 148.

Correspondence received from the West Virginia Development Office concerning Synthetic Fuel Non-Producing Counties Fund Fiscal Year 2004 Allocation and Uses.

Correspondence received from Sheriff Boober concerning Boober v. Imation v. Spectratech.

Letter of Resignation received from Richard F. Hadley, Jr. as a member of the South Jefferson Public Library Board.

Correspondence received from the Office of the State Auditor concerning the Levy Estimate for Fiscal Year 2005.

Correspondence received from the West Virginia Office of Emergency Services concerning the approval of the Law Enforcement, Emergency Operations Center and Citizens Corp. grant funding.

Notice received from the Chief Planner of a Subdivision Work Session on Friday, July 2, 2004.

Weekly settlement for the Charles Town Races received from the West Virginia Lottery.

Community Bulletin received from the Harpers Ferry National Historical Park.

West Virginia Ethics Reporter received.

Oath of Office received from Glenn E. Maye.

Upon rising, the Commission recessed until Thursday morning next beginning at 10:00 o'clock a.m.

PRESIDENT

REGULAR TERM:

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

At a Regular Term of the County Commission of said County and State continued and held at the Courthouse thereof on Thursday, July 8, 2004, beginning at 10:00 o'clock a.m.

PRESENT: Al Hooper, President;
James G. Knode; Greg Corliss;
Rusty Morgan; Jane M. Tabb; Commissioners

In re: PLEDGE OF ALLEGIANCE
Commissioner Hooper conducted the Pledge of Allegiance.

In re: DISPENSE WITH READING OF MINUTES
Motion by Morgan, second by Corliss to accept the Minutes as amended for the meeting held on Thursday, June 24, 2004. Motion carried.
Motion by Knode, second by Tabb to dispense with the reading of the Minutes for the meeting held on Thursday, July 1, 2004, and to approve the Minutes as presented. Motion carried.

In re: APPROVAL OF PURCHASE ORDERS
Motion by Tabb, second by Knode to approve the following Purchase Orders for the Week of July 8, 2004, totaling $5,833.81: 40209, 40210, 40211, 40279, 40007, 40024, 40049, 40260, 40261, 40335, 40336, 40337, 40338 and 40339. Motion carried.

In re: FIDUCIARY ACCOUNTS REVIEWED - APPROVED
The time of the Commission was taken up this day with examination of sundry fiduciary accounts.
Motion by Knode, second by Tabb to accept all fiduciary accounts as presented. Motion carried.

In re: BONDING AND ACTIVITY REPORT
Planning Director, Paul Raco appeared before the Commission with the current Expired Letters of Credit. After discussion, motion by Knode, second by Corliss to collect on all letters of credit if not resolved by 5:00 p.m. on July 13, 2004. Motion carried.
Mr. Raco also gave a detailed activity report for the week of July 5, 2004 for the Department of Planning, Zoning and Engineering.

In re: JEFFERSON COUNTY LEASH LAW ORDINANCE
Motion by Corliss, second by Tabb to approve the Leash Law Ordinance as presented by the County Administrator with an effective date of September 1, 2004. Motion carried.

In re: MARK SCHIAVONE - IMPACT FEE AMENDMENTS CONTINUED
Mark Schiavone, Impact Fee Coordinator, appeared before the Commission to discuss amendments to the proposed Impact Fee Procedures Ordinance.
After discussion, motion by Corliss, second by Tabb to accept amendments as presented. Motion carried.

A TRUE COPY
ATTEST: JENNIFER S. MAGHAN
CLERK, COUNTY COMMISSION
JEFFERSON COUNTY, WV
BY Patricia J. Bonner
DEPUTY CLERK

Weekly settlement reports received from the West Virginia Lottery for the Charles Town Races.

Acceptance of bond in the amount of $410,587 for Oxford Meadows Subdivision.

The Commission received the following correspondence

Correspondence received from Rachel Douglas concerning an ordinance for barking dogs.

Upon rising, the Commission recessed until Thursday afternoon beginning at 9:30 o'clock a.m.

Frances B. Morgan

FRANCES B. MORGAN, COMMISSION PRESIDENT

REGULAR TERM:

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

At a Regular Term of the County Commission of said County and State continued and held at the Courthouse thereof on Thursday, July 17, 2008, beginning at 9:30 o'clock a.m.

PRESENT: Frances B. Morgan, President;
James Surkamp; A.M.S. (Rusty) Morgan, III;
Dale Manuel; Greg Corliss; Commissioners

In re: PLEDGE OF ALLEGIANCE
Commissioner R. Morgan conducted the Pledge of Allegiance.

In re: DISPENSE WITH READING OF MINUTES
Motion by Corliss, second by Manuel to dispense with the reading of the Minutes for the meeting held on Thursday, July 10, 2008, and to approve the Minutes as prepared. Motion carried.

In re: APPROVAL OF PURCHASE ORDERS
Motion by Manuel, second by Corliss to approve the following Purchase Orders for the Week of July 14, 2008, totaling $31,793.07: 45097, 45098, 45481, 45813, 45815, 45820, 45862, 45872, 45873, 45510, 45972, 45974, 45975, 45976, 45439, 45746, 45747, 45748, 45919, 45920, 45830, 45831, 45832, 45833, 45611, 45612, 45613, 45749, 45753, and 45754. Motion carried.

In re: APPROVAL OF ACCOUNTS PAYABLE
Motion by Corliss, second by Manuel to approve the list of Accounts Payable totaling $299,448.87 dated July 17, 2008 as presented by the County Clerk and reviewed by the County Commission. Motion carried.

Ck#	Dept	Vendor	PO#	PO Amt	Amt wo PO	Ck Amt
056203	425	COMCAST		$0.00	$55.94	$55.94
056204	424	AT&T		$0.00	$0.28	$0.28
056205	424	USA MOBILITY WIRELESS		$0.00	$200.17	$200.17
056205	700	USA MOBILITY WIRELESS		$0.00	$397.95	$397.95
056205	712	USA MOBILITY WIRELESS		$0.00	$421.30	$421.30
056206	425	ABH SERVICES, INC.		$0.00	$1,199.70	$1,199.70
056207	ALLOC	AHA/ART&HUMANITIES		$0.00	$2,878.32	$2,878.32
056208	405	MYOSHIA BRIGHT		$0.00	$323.17	$323.17
056209	425	B-K OFFICE SUPPLY INC	45738	$690.00	$0.00	$690.00
056210	424	BOLAND SERVICES	45112	$166.00	$0.00	$166.00
056210	425	BOLAND SERVICES	45112	$427.00	$0.00	$427.00
056210	425	BOLAND SERVICES	45163	$385.00	$0.00	$385.00
056211	PAYROLL	BRICKSTREET MUTUAL INS		$0.00	$17,100.25	$17,100.25
056212	440	*CREAMERS AUTO SERVICE	45744	$24.00	$0.00	$24.00
056212	700	*CREAMERS AUTO SERVICE	45742	$470.87	$0.00	$470.87
056213	700	CHARLES TOWN CHEVRON	45743	$47.00	$0.00	$47.00
056214	406	DANKA OFFICE IMAGING	44435	$302.34	$0.00	$302.34
056215	425	DAYCON	45739	$391.72	$0.00	$391.72
056216	404	EASTERN PANHANDLE PRINT	44534	$750.52	$0.00	$750.52
056217	413	ELECTION SYS & SOFTWARE	45871	$930.00	$0.00	$930.00
056218	424	J.C.EHRLICH		$0.00	$30.00	$30.00

056218	425	J.C.EHRLICH		$0.00	$344.00	$344.00
056219	700	EMERGENCY EQUIP LIGHTING	45346	$650.00	$0.00	$650.00
056220	424	FEDEX		$0.00	$63.88	$63.88
056221	412	FRONTIER		$0.00	$421.33	$421.33
056221	415	FRONTIER		$0.00	$331.27	$331.27
056221	424	FRONTIER		$0.00	$14,599.39	$14,599.39
056221	712	FRONTIER		$0.00	$3,878.23	$3,878.23
056222	402	FIFTH THIRD BANK		$0.00	$1,161.60	$1,161.60
056222	403	FIFTH THIRD BANK		$0.00	$75.00	$75.00
056222	424	FIFTH THIRD BANK		$0.00	$95.76	$95.76
056222	433	FIFTH THIRD BANK		$0.00	$654.33	$654.33
056222	439	FIFTH THIRD BANK		$0.00	$140.00	$140.00
056222	439	FIFTH THIRD BANK		$0.00	$39.52	$39.52
056222	439	FIFTH THIRD BANK		$0.00	$59.99	$59.99
056222	440	FIFTH THIRD BANK		$0.00	$243.83	$243.83
056222	GRANT	FIFTH THIRD BANK		$0.00	$891.59	$891.59
056222	700	FIFTH THIRD BANK		$0.00	$173.48	$173.48
056222	700	FIFTH THIRD BANK		$0.00	$231.33	$231.33
056222	700	FIFTH THIRD BANK		$0.00	$300.89	$300.89
056222	711	FIFTH THIRD BANK		$0.00	$339.12	$339.12
056222	711	FIFTH THIRD BANK		$0.00	$271.35	$271.35
056222	712	FIFTH THIRD BANK		$0.00	$24.98	$24.98
056222	712	FIFTH THIRD BANK		$0.00	$764.76	$764.76
056223	700	GALLS INCORPORATED	45348	$657.30	$0.00	$657.30
056223	701	GALLS INCORPORATED	45349	$250.10	$0.00	$250.10
056224	405	STEPHEN V GROH		$0.00	$341.90	$341.90
056225	712	JAMES P HAYDEN		$0.00	$60.00	$60.00
056226	424	HASLER INC.	45737	$264.00	$0.00	$264.00
056227	428	INFOPRINT		$0.00	$594.00	$594.00
056228	700	IKON OFFICE SOLUTIONS	45343	$216.00	$0.00	$216.00
056229	428	IBM CORPORATION		$0.00	$1,338.00	$1,338.00
056230	413	JEFF CO PUBLIC SERV		$0.00	$27.09	$27.09
056230	425	JEFF CO PUBLIC SERV		$0.00	$54.81	$54.81
056231	ALLOC	JEFFERSON COUNTY HISTORIC		$0.00	$30,070.00	$30,070.00
056232	401	JEFFERSON PUBLISH CO INC		$0.00	$178.05	$178.05
056233	712	LANGUAGE LINE SERVICES		$0.00	$172.48	$172.48
056234	402	MATTHEW BENDER & CO	45861	$565.80	$0.00	$565.80
056235	712	PRIORITY DISPATCH	45531	$295.00	$0.00	$295.00
056236	424	HOME DEPOT CREDIT SERV		$0.00	$29.98	$29.98
056236	425	HOME DEPOT CREDIT SERV		$0.00	$582.24	$582.24
056236	716	HOME DEPOT CREDIT SERV		$0.00	$74.88	$74.88
056237	700	MCKINNEY'S AUTO REPAIR	45741	$249.26	$0.00	$249.26
056238	424	VERIZON BUSINESS		$0.00	$1,109.98	$1,109.98
056239	422	MANPOWER		$0.00	$3,339.45	$3,339.45
056240	ALLOC	JEFF CO PARKS & REC		$0.00	$14,357.14	$14,357.14
056241	403	PIFER OFFICE SUPPLY, INC	45816	$31.08	$0.00	$31.08
056241	404	PIFER OFFICE SUPPLY, INC	44529	$159.39	$0.00	$159.39
056242	700	EVELYN J. PARTLOW	45350	$88.00	$0.00	$88.00
056243	401	REGION 9 PLANNING & DEVE		$0.00	$21,632.49	$21,632.49
056244	424	LANDMARK ELEVATOR INC.	45740	$80.00	$0.00	$80.00
056244	425	LANDMARK ELEVATOR INC.	45740	$240.00	$0.00	$240.00
056245	425	RCS SECURITY	45745	$54.00	$0.00	$54.00
056246	401	ROBERT R. RODECKER		$0.00	$1,093.75	$1,093.75
056247	PAYROLL	RETIREE HLTH BENEFIT TRS		$0.00	$6,635.00	$6,635.00
056248	424	SMITH-NADENBOUSCH INS		$0.00	$100.00	$100.00
056249	704	WV REGIONAL JAIL	45956	$115,963.50	$0.00	$115,963.50
056250	406	SHEETZ FLEET FUELING		$0.00	$994.25	$994.25
056250	424	SHEETZ FLEET FUELING		$0.00	$2,351.33	$2,351.33
056250	440	SHEETZ FLEET FUELING		$0.00	$792.80	$792.80

056250	700	SHEETZ FLEET FUELING		$0.00	$13,881.42	$13,881.42
056250	711	SHEETZ FLEET FUELING		$0.00	$322.38	$322.38
056250	712	SHEETZ FLEET FUELING		$0.00	$500.91	$500.91
056250	716	SHEETZ FLEET FUELING		$0.00	$924.41	$924.41
056251	711	SOFTWARE COMPUTER GROUP	45591	$650.00	$0.00	$650.00
056252	405	BRANDON C.H. SIMS		$0.00	$49.00	$49.00
056253	700	PAT SMITH		$0.00	$284.56	$284.56
056254	405	GREGORY V.SMITH		$0.00	$64.00	$64.00
056255	424	UPS		$0.00	$17.47	$17.47
056256	ALLOC	JEFFERSON CO CONVENTION		$0.00	$17,235.46	$17,235.46
056257	401	WVNET		$0.00	$16.67	$16.67
056258	443	PAMELA HOLSTEIN-WALLACE		$0.00	$2,314.58	$2,314.58
056259	405	WV ST TREASURER'S OFFICE		$0.00	$4,800.00	$4,800.00
056260	402	ARABIA ANDERSON	45869	$234.00	$0.00	$234.00
056260	402	ARABIA ANDERSON	45870	$163.80	$0.00	$163.80
TOTAL				**$125,395.68**	**$174,053.19**	**$299,448.87**

DEPT	NAME	DEPT AMTS
401/COM	CO. COMMISSION	$22,920.96
402/CCLK	CO. CLERK	$2,125.20
403/CIR CLK	CIRCUIT CLERK	$106.08
404/TAX	TAX OFFICE	$909.91
405/PA	PROS ATTY	$5,578.07
406/ASSR	ASSESSORS	$1,296.59
408/GOV	ST.COMPNET CHG BO GOV UNIT	
412/AG	AG AGT	$421.33
413/ELE	ELECTION	$957.09
415/MAG CT	MAGISTRATE COURT	$331.27
415/	GENERAL SCHOOL/CO TRANSFER	
422/IMPACT	CAPITAL PLANNING /MANAGEMENT	$3,339.45
424/CTHS	COURT HOUSE	$19,108.24
425/OB	OTHER BUILDING	$4,424.41
428/DATAP	DATA PROCESSING	$1,932.00
430/HLS	HOMELAND SEC	
431/ECON DEV	ECON DEV	
433/GIS	GIS/ADDRESSING	$654.33
439/PZ	PLANNING ZONING	$239.51
440/ENG.	DEPT OF ENGINEERING	$1,060.63
451/ZONING	ZONING DEPT	
700/SHRF	SHERIFF DEPT	$17,648.06
701/SHRF	SHERIFF DEPT	$250.10
704/WV JAIL	ST/WV REGIONAL JAIL	$115,963.50
711/OES	EMERG SVC	$1,582.85
712/911	911 COMMUNICATION	$6,117.66
716/A/C	ANIMAL CONTROL	$999.29
801/MTL HLTH	MENTAL HEALTH TRANS TO ENTIT	
808GOV UNIT	SWA CONTRIB OTHER GOV UNIT	
975/CAP OTL	CO. CLERK / CAPITAL OUTLAY	
976/CAP/CIR	CIRCUIT CLERK/CAPITAL OUTLAY	
978/CAP/PA	PROS ATTY/CAPITAL OUTLAY	
979/CAP/TAX	TAX OFFICE/CAPITAL OUTLAY	
980/CAP/SRF	SHERIFF DEPT/CAPITAL OUTLAY	
983/CLK ELEC	CO CLERK ELECTION/CAP OUTLAY	
986/CAP/COMM	CO. COMMISSION/CAPITAL OUTLAY	
988/CAP/OB	OTHER BUILDING/CAPITAL OUTLAY	
989/CAP/AGT	AG AGT/CAPITAL OUTLAY	
992/CAP/911	911 COMMUNICATION/CAP OUTLAY	
ALLOC	ALLOCATIONS	$64,540.92
GRANTS	GRANTS	$3,206.17
PAYROLL	PAYROLL	$23,735.25
Totals		**$299,448.87**

In re: LEGISLATIVE ISSUES

Commissioner Manuel reported to the Commission that the office of Senator Byrd is seeking additional funding for the Route 9 Project.

In re: APPOINTMENTS TO THE WATER ADVISORY COMMITTEE

No action was taken on this agenda item.

In re: APPOINTMENTS OF ALTERNATE MEMBERS TO THE BOARD OF ZONING APPEALS

No action was taken on this agenda item.

In re: JAIL OPENING CELEBRATION COMMITTEE
SUPPORT OF OLD JAIL CELEBRATION

The Commission agreed to combine these agenda items and move it forward to next week's agenda.

In re: PURCHASING POLICY

The Commission agreed to place this agenda item on next week's agenda.

In re: ZONING AND SUBDIVISION ORDINANCE AMENDMENTS DISCUSSION

Roger Goodwin, Chief County Engineer appeared before the Commission and reminded the Commission of the Planning Commission Public Hearing on Monday, July 21, 2008 at 7:00 p.m. at Jefferson High School regarding the Proposed Zoning Ordinance and the Draft Zoning Map.

In re: BONDING AND ACTIVITY REPORT

Upon recommendation from Chief County Engineer Roger Goodwin, motion by Manuel, second by R. Morgan to approve the partial release of an irrevocable letter of credit in the amount of $158,431.08 for The Inn at Charles Town with the County to retain $708,645.00. Motion carried.

Upon recommendation from Chief County Engineer Roger Goodwin, motion by R. Morgan, second by Corliss to approve the partial release of an irrevocable letter of credit in the amount of $18,017.00 for Rattlesnake Run, Inc. - Potomac Ridge Subdivision with the County to retain $22,819.00. Motion carried.

Upon recommendation from Chief County Engineer Roger Goodwin, motion by Manuel, second by R. Morgan to approve the complete release of an irrevocable letter of credit in the amount of $54,917.00 for Shepherd's Retreat, LLC - Shepherd's Retreat Subdivision. Motion carried.

In re: COUNTY COMMISSION SUMMIT LEGISLATIVE AGENDA - 2009 ISSUES

The Commission discussed the upcoming County Commission Legislative Summit Agenda - 2009 Issues scheduled for August 11, 2008 at the Woods Resort.

In re: PUBLIC COMMENT

John Piwowarski appeared before the Commission and made comment.

Gary Kable, Board of Education Vice President appeared before the Commission and made comment regarding the Impact Fee Ordinance changes regarding Age Restricted Communities.

Andrew Skinner, Attorney for the Board of Education appeared before the Commission and made comment regarding the Impact Fee Ordinance changes regarding Age Restricted Communities.

In re: WEST VIRGINIA COMMUNITY CORRECTIONS FUNDS GRANT - APPROVAL OF CONTRACT AGREEMENT - $193,812
WEST VIRGINIA COMMUNITY CORRECTIONS FUND GRANT - APPROVAL OF CONTRACT AGREEMENT - $62,500

Motion by Manuel, second by R. Morgan to approve the West Virginia Community Corrections Funds Grants - Contract Agreement - $193,812 and Contract Agreement - $62,500 and to authorize the President of the Commission to affix her signature to the appropriate documents. Motion carried.

Motion by R. Morgan, second by Corliss to support one site for the Day Reporting Center at this time. Motion passed by a 4-1 vote. Commissioner F. Morgan voted no.

In re: APPROVAL OF GRANT CONTRACT & RESOLUTION - GOVERNOR'S COMMUNITY PARTICIPATION PROGRAM - JEFFERSON COUNTY PARKS AND RECREATION - $7,000

Motion by Manuel, second by F. Morgan to approve the Governor's Community Participation Program for the Jefferson County Parks and Recreation in the amount of $7,000 and to authorize the President to affix her signature to the following Resolution: Motion carried.

RESOLUTION

The Jefferson County Commission met on the 17th day of July, 2008 with a quorum present and passed the following Resolution:

Be It Resolved that the County Commission of Jefferson County, West Virginia, hereby authorize Frances B. Morgan, President of the Jefferson County Commission, to act on its behalf to enter into a contractual agreement with the West Virginia Development Office to receive and administer grant funds pursuant to provision of the Governor's Community Participation Program. This project is to assist in the objective to

purchase and install directional and informational signs for the Sam Michael's Park and the Jefferson County Community Center for the Jefferson County Parks and Recreation.

Dated: 7/17/2008

Frances B. Morgan, Commission President

In re: APPROVAL OF GRANT CONTRACT & RESOLUTION - GOVERNOR'S COMMUNITY PARTICIPATION PROGRAM - JEFFERSON COUNTY PARKS AND RECREATION - $10,000

Motion by Manuel, second by R. Morgan to approve the Governor's Community Participation Program for the Jefferson County Parks and Recreation in the amount of $10,000 and to authorize the President to affix her signature to the following Resolution: Motion carried.

RESOLUTION

The Jefferson County Commission met on the 17th day of July, 2008 with a quorum present and passed the following Resolution:

Be It Resolved that the County Commission of Jefferson County, West Virginia, hereby authorizes Frances B. Morgan, President of the Jefferson County Commission, to act on its behalf to enter into a contractual agreement with the West Virginia Development Office to receive and administer grant funds pursuant to provision of the Governor's Community Participation Program. This project is to assist in the objective to purchase computer, server, software and software license to enhance the computer networking capabilities for the Jefferson County Parks and Recreation.

Dated: 7/17/2008

Frances B. Morgan, Commission President

In re: MICHELLE GOLDMAN - EASTERN PANHANDLE FREE CLINIC

Michelle Goldman, Eastern Panhandle Free Clinic Director appeared before the Commission to discuss office and parking space needs.

In re: BOARD OF HEALTH INTERVIEWS

Joseph Osterman and Mark Shields appeared before the Commission for the Board of Health Interviews.

In re: APPOINTMENT - BOARD OF HEALTH - ONE 5-YEAR TERM

Commissioner Manuel nominated Willis Nowell to the Board of Health for a 5-year term.

Motion by R. Morgan, second by Manuel to close nominations. Commissioner Manuel withdrew his second. This motion was withdrawn.

Commissioner Corliss nominated Joseph Osterman to the Board of Health for a 5-year term.

Willis Nowell was appointed to the Board of Health for a 5-year term by a 4-1 vote. Commissioner Corliss voted for Joseph Osterman.

In re: PARKS AND RECREATION INTERVIEWS

Daniel McVicar Donald Briggs, and Laura Bowman appeared before the Commission for the Parks and Recreation interviews.

In re: APPOINTMENTS - PARKS & RECREATION COMMISSION - THREE 3-YEAR TERMS

The Commission discussed increasing the Parks and Recreation Commission from 11 members to 12 members or 13 members.

Motion by Surkamp, second by Corliss to increase the Parks and Recreation Commission by 1 member. Commissioner F. Morgan called this motion out of order.

Motion by Manuel, second by F. Morgan to postpone the increase to the Parks and Recreation Commission by 1 member and to vote on the members after legal review. Motion carried.

In re: BUILDING COMMISSION INTERVIEWS

Marvin Pratt appeared before the Commission for the Building Commission interviews.

In re: APPOINTMENT - BUILDING COMMISSION - ONE UNEXPIRED TERM

Motion by Surkamp, second by Manuel to appoint Marvin Pratt to the Building Commission for an unexpired term ending July 27, 2010.

In re: APPOINTMENTS - PARKS & RECREATION COMMISSION - THREE 3-YEAR TERMS - CONTINUED

Leslie D. Smith, County Administrator informed the Commission that West Virginia State Code provides that the Parks and Recreation Commission shall be eleven members.

The Commission agreed to make the appointments to the Parks and Recreation Commission at this time.

Nomination by R. Morgan to appoint Daniel McVicar to the Parks and Recreation Commission.

Nomination by Manuel to appoint Bill Hoak to the Parks and Recreation Commission.

Nomination by Surkamp to appoint Donald Briggs to the Parks and Recreation Commission.
Nomination by F. Morgan to appoint Laura Bowman to the Parks and Recreation Commission.
Nomination by Manuel to appoint Mike Jacobs to the Parks and Recreation Commission.

	Surkamp	R. Morgan	F. Morgan	Manuel	Corliss
Daniel McVicar	✓	✓	✓	✓	✓
Mike Jacobs		✓		✓	✓
Bill Hoak		✓		✓	✓
Donald Briggs	✓		✓		
Laura Bowman	✓		✓		

Daniel McVicar, Mike Jacobs and Bill Hoak were reappointed to the Parks and Recreation Commission for three year terms ending June 30, 2011.

In re: JENNIFER S. MAGHAN - COUNTY CLERK'S REPORT
Gail Magaha, Deputy County Clerk appeared before the Commission requesting approval of employment of Geraldine Herbert in the County Clerk's office.
Motion by Manuel, second by Surkamp to approve the employment of Geraldine Herbert in the County Clerk's office. Motion carried.

In re: CHARLOTTE PORTER - BOOKS FOR BABIES REPORT
Charlotte Porter appeared before the Commission to request funding in the amount of $1,200 for the Books for Babies and gave a status report on the program.

The Commission took a 15 minute break at 11:15 a.m.

In re: REGION 9 INTERVIEWS
Neal Carpenter and Kristen Ringstaff appeared before the Commission for the Region 9 interviews.

In re: APPOINTMENT - REGION 9
Nomination by Corliss to reappoint Neal Carpenter to the Region 9.
Neal Carpenter was reappointed to the Region 9 for a one year term ending June 30, 2009.

In re: LEN SWITALSKI - REQUEST FOR INCREASE IN EXECUTOR FEES - ESTATE OF WILLIAM E. AYERS
No action was taken on this agenda item. Mr. Switalski called and cancelled.

In re: EMERGENCY COMMUNICATIONS CENTER CHANGE ORDER #4
Kirk Davis, Capital Projects Manager appeared before the Commission requesting approval of the Emergency Communications Center change order #4. Motion by Manuel, second by Corliss to approve the Change Order #4 for the Emergency Communications Center subject to review by the County Administrator and Legal Staff. Motion carried.

In re: APPROVAL OR DISAPPROVAL OF PROPOSED IMPACT FEE ORDINANCE CHANGES REGARDING AGE RESTRICTED COMMUNITIES (GC)
The Commission agreed to place this item on next week's agenda.

The Commission took a lunch break at 12:05 p.m. The Commission reconvened at 1:30 p.m.

In re: HARPERS FERRY BOLIVAR PUBLIC SERVICE DISTRICT INTERVIEWS
No one was present for the Harpers Ferry/Bolivar Public Service District interviews.

In re: HARPERS FERRY/BOLIVAR PUBLIC SERVICE DISTRICT - ONE 6-YEAR TERM
Nomination by Manuel to reappoint Raymond Biller to the Harpers Ferry/Bolivar Public Service District.
Raymond Biller was reappointed to the Harpers Ferry/Bolivar Public Service District for a 6-year term ending June 30, 2014.

In re: SOLID WASTE AUTHORITY INTERVIEWS
Tony Hayes appeared before the Commission for the Solid Waste Authority interviews.

In re: APPOINTMENTS SOLID WASTE AUTHORITY - ONE 4-YEAR TERM
Nomination by R. Morgan to reappoint Bill Weston to the Solid Waste Authority.
Nomination by Surkamp to appoint Tony Hayes to the Solid Waste Authority.

Bill Weston was reappointed to the Solid Waste authority for a 4-year term ending June 30, 2012 by a 3-2 vote. Commissioners R. Morgan, Corliss and Manuel voted for Bill Weston. Commissioners F. Morgan and Surkamp voted for Tony Hayes.

In re: THE ALICE FERGUSON FOUNDATION - REQUEST TO SIGN ON TO THE POTOMAC RIVER WATERSHED TRASH TREATY

The Commission agreed to forward this matter to Stephanie Grove, Assistant Prosecuting Attorney for review and to place this item on next week's agenda.

In re: TRANSFER OF THE $100,000 IN THE SHEPHERDSTOWN BATTLEFIELD ACCOUNT TO AN OPERATIONAL ACCOUNT DEDICATED TO ACHIEVING SALARY EQUITY (DM)

Motion by Manuel, second by Corliss to transfer the $100,000 in the Shepherdstown Battlefield account to an operational account dedicated to achieve salary equity. After discussion, the motion failed by a 1-4 vote. Commissioners Corliss, F. Morgan, R. Morgan and Surkamp voted no.

In re: KAYE MOORE - MOUNTAIN WATER SYSTEM

Commissioner Manuel recused himself from this agenda discussion and vote. Kaye Moore appeared before the Commission to discuss the Mountain Water System. For the record, Stephanie Grove, Assistant Prosecuting Attorney and Roger Goodwin, Chief County Engineer were present and made comments.

In re: PETER CORUM - ARTS & HUMANITIES ALLIANCE

No action was taken on this agenda item. Mr. Corum did not appear.

In re: OFFICE SPACE FOR HISTORIC LANDMARKS AND ARTS & HUMANITIES ALLIANCE

No action was taken on this agenda item.

In re: STEPHANIE GROVE - LEGAL UPDATE AND REPORT

Stephanie Grove, Assistant Prosecuting Attorney appeared before the Commission for the weekly legal update and report. Ms. Grove reported on the following:

- Charitable Solicitation
- Employee Handbook
- Barking Dog Ordinance
- Tax Case - Shenandoah Sales and Service - dismissed

Motion by R. Morgan, second by Surkamp to enter into Executive Session to discuss pending litigation regarding Public Service Commission and Jefferson Utilities Inc, case # 06-0817. Motion carried. For the record, Commissioner Manuel abstained and was not present during the Executive Session.

Motion by R. Morgan, second by Corliss to return to Regular Session. Motion carried.

Motion by R. Morgan, second by Corliss to deny extension on the Administrative Law Judge decision concerning the Mountain Water System Fair Rate Committee. Motion carried. Commissioner Manuel abstained.

In re: RETENTION OF OUTSIDE COUNSEL FOR ALL EMPLOYMENT LAW MATTERS OR ISSUANCE OF RFP FOR SAME (FM)

Commissioner F. Morgan withdrew this agenda item with no objection from the Commission.

In re: REQUEST TO PA FOR COMMENTS REGARDING LEGAL REQUIREMENTS AND AVAILABILITY OF PA SUPPORT FOR REVIEWING COUNTY EMPLOYEE JOB DESCRIPTIONS. ALSO, SHOULD THE COUNTY COMMISSION REQUIRE AN ATTORNEY REPRESENTING THE COUNTY COMMISSION AT PERFORMANCE REVIEW, THEN WHO PROVIDES THE EMPLOYEE BEING EVALUATED LEGAL SUPPORT (GC)

The Commission discussed the request to the Prosecuting Attorney for comments regarding legal requirements and availability of the Prosecuting Attorney support for reviewing county employee job descriptions. Motion by Corliss, second by F. Morgan to submit 4 job description documents and the evaluation performance form to Stephanie Grove, Assistant Prosecuting Attorney for legal review and requested that she prepare a list of procedures. Motion carried.

In re: COUNTY ADMINISTRATOR REPORTS

Leslie D. Smith, County Administrator discussed the draft letter from Jane Peters concerning the Regional Economic Development Alliance. The Commission agreed to place this item on next week's agenda.

Ms. Smith reported on the $12,000 Water Study Invoice from the USGS.

Ms. Smith also reminded the Commission of the Budget Work Session on Monday, July 21, 2008 at 10:00 a.m.

In re: COUNTY COMMISSION REPORTS

Commissioner F. Morgan reported on the Farmland Protection Board meeting she attended.

Commissioner Surkamp reported on the Power Transmission luncheon meeting he attended.

The Commission received the following information:

Reminder of County Commission Workshop on Monday, July 21, 2008, at 10:00 a.m.

Acceptance of Bond for IHOP Restaurant in the amount of $274,747.

Reminder of visit from Kathy Mattea at the Jail Building on Friday, July 18, 2008, at 10:15 a.m.

Correspondence received from the National Park Service concerning the retirement of Donald Campbell.

Correspondence received from John Doyle concerning certified mailings of changes in the county's zoning ordinance.

Information received from Peter Appignani concerning Jefferson Utilities.

Correspondence received from James L. Pitrolo, Jr. concerning the Prevention Resource Office Program.

Correspondence received from Guardian concerning the addition of an account manager.

Notice received of a "Power of Ten" Summit to develop downtown revitalization plans on September 8-10, 2008.

Correspondence received from the Lafferty Family concerning their appreciation for services and pet adoption from the Animal Control Office.

Copy of Title 110, Legislative Regulations, Department of Tax and Revenue, Series 1A - Valuation of Farmland and Structures Situated Thereon for Ad Valorem Property Tax Purposes received from Cam Tabb.

Correspondence received from Region 9 concerning the FY2009 Annual Assessment.

Notice received from the West Virginia Department of Environmental Protection of the appointment of William Madert to the Solid Waste Authority.

Correspondence received from Andrew Arnold concerning Fire and EMS fees.

Information received from Todd Fagan on the Eastern Panhandle GIS Users Group Meeting on Tuesday, August 26, 2008.

Appointment to be made to the Board of Health on Thursday, August 7, 2008.

Commission Order received from the Public Service Commission concerning Enhanced 911 Fee for Prepaid Services.

Information concerning mileage rates received from the County Commissioners' Association.

Meeting minutes received from the Harpers Ferry/Bolivar Public Service District.

Meeting minutes received from the Jefferson County Public Service District.

Weekly settlement report for the Charles Town Races received from the West Virginia Lottery.

CORRESPONDENCE

Correspondence received from Sherri Neilson concerning a barking dog ordinance.

Upon rising, the Commission recessed until Thursday morning next beginning at 9:30 o'clock a.m.

Frances B. Morgan, Commission President

A TRUE COPY
ATTEST: JENNIFER S. MAGHAN
CLERK, COUNTY COMMISSION
JEFFERSON COUNTY, WV

BY Katrina L. Boomer
DEPUTY CLERK

State of West Virginia,

COUNTY OF JEFFERSON

I, ***Raymond Biller***, do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of West Virginia.

I, ***Raymond Biller***, do solemnly swear or affirm that I will faithfully discharge and perform the duties of the office of Harpers Ferry/Bolivar Public Service District to the best of my skill and judgment, and according to law. So help me God.

Signed Raymond Biller

The above oath was taken and subscribed on this 28th day of July, 2008 at the Jefferson County Court House, 100 East Washington Street, Charles Town, West Virginia.

WV Constitution Article IV, Section 5. Oath or affirmation to support the constitution.

Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath or affirmation that he will support the constitution of the United States and the constitution of this state, and that he will faithfully discharge the duties of his said office to the best of his skill and judgment; and no other oath, declaration, or test shall be required as a qualification, unless herein otherwise provided.

Oath administered by Jennifer S. Maghan
Clerk of the County Commission

Signed Jennifer S. Maghan

COUNTY COMMISSION WEST VIRGINIA JEFFERSON

Book-Page 1-79

JEFFERSON COUNTY, WV

FILED

July 29, 2008 10:13:48

JENNIFER S. MAGHAN

COUNTY CLERK

TRANSACTION NO: 2008015951

OATH OF OFFICE

Book: 1 Page: 00078

State of West Virginia,

COUNTY OF JEFFERSON, SCT

I, James A. Addy, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia.

I, James A. Addy, do solemnly swear that I will faithfully discharge and perform the duties of the office as a member of the Harpers Ferry/Bolivar Public Service District to the best of my skill and judgement, and according to law, So help me God.

James A. Addy

James A. Addy

The above oath was taken and subscribed to before the Clerk of the County Commission this 16th **day of** July**, 2004.**

John E. [illegible]

Clerk of the County Commission

State of West Virginia,

COUNTY OF JEFFERSON, SCT

I, Robert J. Hardy, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia.

I, Robert J. Hardy, do solemnly swear that I will faithfully discharge and perform the duties of a member of the Harpers Ferry/Bolivar Public Service District of Jefferson County to the best of my skill and judgement, and according to law, So help me God.

The above oath was taken and subscribed to before the Clerk of the County Commission this 20th day of February, 2007.

Robert J. Hardy

Jennifer S. Maghan
Clerk of the County Commission

RULES OF PROCEDURE

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. The name of this Public Service District shall be HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT (the "District").

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

Section 3. The District may have an official seal in such form as has been or is approved by the Board of the District.

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

ARTICLE II

PURPOSE

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

ARTICLE III

MEMBERSHIP

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

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the District shall immediately notify the County Commission or other entity provided under the Act and request the

appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the District shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

Section 3. The District shall provide to the Public Service Commission of West Virginia, within 30 days of the appointment, the following information: the new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board, and such other information required under the Act.

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

Section 5. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the District, and no former Board member may be hired by the District in any capacity within a minimum of 12 months after such Board member's term has expired or after such Board member has resigned from the Board.

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

Section 7. The members of the Board are not personally liable or responsible for any obligations of the District or the Board but are answerable only for willful misconduct in the performance of their duties.

ARTICLE IV

MEETINGS OF THE BOARD

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

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

Section 3. Unless otherwise waived, notice to members of regular meetings shall be by letter or telephone. Unless otherwise waived, notice to members of each special meeting shall be by letter or telephone not less than 72 hours before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted at such meeting, and no business other than that stated in the notice shall be transacted at such special meeting.

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

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

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

to that posted:

News Media	Address
Spirit of Jefferson Advocate	P.O. Box 966 Charles Town, WV 25414
The Journal	P.O. Box 807 Martinsburg, WV 25401

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

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

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

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

address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

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

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

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

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

(1) The date, time and place of the meeting;
(2) The name of each Board member present and absent;
(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a Board member, the vote of each Board member, by name.

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

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

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

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

ARTICLE V

OFFICERS

Section 1. The officers of the Board shall be a Chairperson, Secretary and Treasurer. The Chairperson shall be elected from the members of the Board. The

Secretary and Treasurer need not be members of the Board.

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

ARTICLE VI

DUTIES OF OFFICERS

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

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

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. Duplicate records shall be filed with the County Commission and shall include the minutes of all Board meetings. The Secretary shall, together with the Chairperson, sign the minutes of the meetings at which the Secretary is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other documents and papers of the Board. The Secretary shall also perform such other duties as may be required of the Secretary by law or as may be conferred upon the Secretary from time to time by the members of the Board.

Section 4. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through the Treasurer and

shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. The Treasurer shall keep and preserve all financial records of the District for 10 years and shall at all times have such records readily available for public inspection. At the end of the Treasurer's term of office, the Treasurer shall promptly deliver all financial records of the District to the Treasurer's successor in office. The Treasurer shall also perform such other duties as may be required of the Treasurer by law or as may be conferred upon the Treasurer from time to time by the members of the Board. The Treasurer shall furnish bond in an amount to be fixed by the Board for the use and benefit of the District.

Section 5. No money may be paid out by the District except upon an order signed by the Chairperson and Secretary, or such other person or persons authorized by the Chairperson or the Secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the Board.

Section 6. The members and officers of the Board shall make available to the County Commission, at all times, all of its books and records pertaining to the District's operation, finances and affairs, for inspection and audit.

ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

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

Adopted this 13th day of July, 2009.

Raymond E. Biller
Chairperson and Member

Robert J. Hardy
Member

Member

{M0597022.1}

CERTIFICATION

Certified a true copy of the Rules of Procedure duly adopted by the Public Service Board of HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT on July 13, 2009.

Dated this 21st day of July, 2009.

[SEAL, IF ANY]

James A. Addy

Secretary

{M0597022.1}

Harpers Ferry/ Bolivar PSD
P. O. BOX 235
192 LAKE QUIGLEY DRIVE
HARPERS FERRY, WEST VIRGINIA 25425
(304)-535-2390 FAX (304)-535-2524

THE HARPERS FERRY/BOLIVAR PUBLIC SERVICE DISTRICT CONDUCTED THE JANUARY MEETING AT THE WASTEWATER TRETMEN PLANT LOCATED AT 192 LAKE QUIGLEY DRIVE, HARPERS FERRY, WEST VIRGINIA. THE MEETING WAS HELD JANUARY 14, 2008.

Those in attendance were:
Raymond Biller-Chairman
Robert Hardy-Treasurer
James A Addy-Secretary
James Williams-Operations Manager
David E Tennant-Operator
Fonnie Crawford-Adm.

Chairman Biller called he meeting to order at 8:30 a.m.

Motion by Mr. Addy ,seconded by Mr. Hardy to approve the December minutes, approved.

Motion by Mr. Addy ,seconded by Mr. Hardy to approve the December 2008 financial statements approved.

Motion by Mr. Addy, seconded by Mr. Hardy to keep chairman, treasurer, and secretary the same, approved.

Letter from Stephen N Chambers, Attorney at Law, discussed required notices that must be given due to rate increase.

Mr. Addy made a motion that the WV Municipal Bond Commission be advised by letter the reasons for our past due bond payments, seconded by Mr. Hardy, approved.

Mr. Addy made a motion that the employees be paid a bonus in the amount of $250.00, seconded by Mr. Hardy Approved.

Meeting adjourned at 8:45 a.m.

Raymond Biller

Raymond Biller-Chairman _____ Robert Hardy-Treasurer _____ James A Addy-Secretary

082118alj041709.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL

5/7/2009

Entered: April 17, 2009

CASE NO. 08-2118-PSD-CN

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
Harpers Ferry, Jefferson County
Application for a Certificate of Convenience and Necessity to construct certain improvements to the District's wastewater treatment plant in Jefferson County and to approve increased rates and charges.

RECOMMENDED DECISION

On December 23, 2008, Harpers Ferry-Bolivar Public Service District (District) filed an application for a certificate of convenience and necessity for the installation of a sludge belt filter press system to replace the existing sludge drying beds. The belt filter press and related improvements are estimated to cost $524,975. Design, engineering, inspection, legal, accounting and other related costs and project contingencies are projected to total an additional $290,054. The District is also seeking authority to refinance a $105,000 Bank of Charles Town loan, which was obtained in 2005 as part of the replacement and upgrade of the District's raw sewage screening facility, bringing the total projected cost of the proposed project to $920,029. The proposed project will be funded by a $920,029 loan from the West Virginia Department of Environmental Protection (WVDEP). The loan will be for a term of twenty (20) years at an annual interest rate of two percent (2%), plus an annual administrative fee of one percent (1%). A Rule 42 Exhibit for the year ended June 30, 2008, prepared by J. C. Kunkle & Associates, A.C., was attached to the certificate application. The District does not have resale customers.

By Commission Order dated December 23, 2008, the District was directed to provide notice of the filing of the certificate application by publishing a copy of said Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Jefferson County, West Virginia, making due return to the Commission of proper certification of publication immediately after publication. The Notice directed that anyone desiring to make objection to the certificate application or intervene in said proceeding must do so, in writing, within thirty (30) days after publication of said Notice. It was further provided that failure to timely protest or intervene could affect one's right to protest, including any associated rate increase, or to participate in future proceedings. The Notice further provided that, if no protests were received within the thirty-day period, the Commission could waive formal hearing and grant the application based upon the

evidence submitted in the application and the Commission's review thereof.

By Commission Order dated January 7, 2009, the Commission referred this matter to the Division of Administrative Law Judges for further disposition, with a decision due date of on or before May 7, 2009, if no protests to the certificate application were filed within the thirty-day protest period, and on or before July 21, 2009, if protests to the certificate application were filed.

On January 7, 2009, the District filed an affidavit of publication reflecting that the notice of filing was published on January 1, 2009, in the Spirit of Jefferson Advocate, a newspaper, duly qualified by the Secretary of State, published and of general circulation in Jefferson County, West Virginia.

On January 21, 2009, Staff Attorney Ronald E. Robertson, Jr., filed an Initial Joint Staff Memorandum to which was attached an Initial Internal Memorandum dated January 20, 2009, prepared by Pete Lopez, Utilities Analyst II, Water and Wastewater Division, and Jonathan M. Fowler, P.E. Engineer III, Engineering Division. Commission Staff reported that it was continuing its review of the District's certificate application and would file its final recommendations herein in a timely manner.

On January 28, 2009, the District filed an affidavit executed by its office manager regarding its compliance with the individual customer notice requirements of Rule 10.3.d. of the Commission's Rules of Practice and Procedure (Procedural Rules).

On March 17, 2009, Mr. Robertson filed a Final Joint Staff Memorandum to which was attached a Final Staff Internal Memorandum dated March 16, 2009, prepared by Mr. Fowler and Mr. Lopez. Mr. Fowler reported that the District proposes to construct improvements to its existing wastewater treatment facility consisting of the installation of a new belt filter press system which will be used for sludge dewatering. The proposed system will replace the existing uncovered sludge drying beds which are inadequate and which limit the treatment plant's ability to properly dispose of excess biological solids (sludge). The resulting bottleneck in sludge handling inhibits the plant's capacity to properly treat sewage. The proposed project consists entirely of internal improvements to the existing treatment plant and will provide for the installation of a new belt filter press sludge processing system and appurtenances. Key items to be constructed and/or installed include the following, to-wit:

1. A new belt filter press having a throughput capacity of 600 pounds per hour, total solids, at cake-solids content of 16%;

2. Polymer make-up, mixing and feed systems;

3. New sludge feed pumps (progressive cavity);

4. Sludge cake pumps (for dried sludge cake transport) with piping;

5. Lime addition system (for post-dewatering sludge cake conditioning);

6. A new building to house the belt filter press and associated equipment. This building will be constructed upon the footprint of one of the two existing sludge drying beds. (The other drying bed will remain); and

7. Modifications to the existing plant-site piping and the electrical and associated plant utility systems required to accommodate the new building and process equipment.

Commission Engineering Staff noted that the initial project cost of $920,029 had been adjusted downward to $893,765 due to a $26,264 reduction in the balance owed on the District's Bank of Charles Town loan, which is being refinanced as part of this proceeding.[1] A summary of the total project cost is as follows, to-wit:

Construction	$524,975
Planning and Engineering	155,265
Legal and Accounting	35,000
Pre-Funded Reserves	42,332
Interim Financing	4,000
Land and Rights-of-Way	15,624
Bank Note Retirement	78,736
Project Contingency	37,833
Total	$893,765

Commission Staff noted that the proposed project has not actually been bid and that the project cost is based entirely upon estimated construction costs and that, once bids are actually received, it is likely that the project cost will change. It was also noted that, since the project consists entirely of internal improvements to the treatment facility, the cost per customer was not calculated or considered by Commission Staff in formulating its recommendations in this proceeding.

Based upon its review of the District's application, Commission Staff stated that most of the major permits and approvals necessary for the construction of this project had been obtained.[2] Therefore, Commission Engineering Staff recommended that Commission approval of the District's certificate be made contingent upon the District's receipt of all necessary federal, state and local permits and approvals for the

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[1]The Bank of Charles Town loan was for replacement and upgrade costs associated with a new sewage screening facility which was approved in Case No. 04-0580-PSD-19A (Final December 14, 2004).

[2]In its certificate application, the District stated that the only permit not already acquired by the District is a building permit for the structure to house the filter press. According to the District, this permit will be obtained from the Jefferson County Planning, Engineering and Building Permit Office just prior to awarding the contract for construction of the proposed project at issue in this proceeding.

proposed construction, that copies of any permits and approvals which have not already been filed with the Commission be filed herein immediately upon the District's receipt of such documents and that actual construction of the proposed project should not begin until such time as all permits and approvals have been issued. Commission Engineering Staff also recommended that the District be required to file a copy of the WVDEP's approval of the plans and specifications for the proposed project, as well as a copy of the WVDEP's authorization to advertise for bids.

Commission Financial Staff reported that, due to the reduction in the amount necessary to satisfy the Bank of Charles Town loan, funding for the proposed project now consists of an $893,765 loan from the WVDEP for a term of twenty (20) years at an annual interest rate of two percent (2%) with a one percent (1%) administrative fee. The WVDEP loan will require an annual debt payment of $55,927 and a debt reserve of $5,593. While the District requested a 19.88% increase to its rates and charges, Commission Staff, after adjustment of the project debt, recommended an 18.31% increase, which would raise the current rates from $7.76 per 1,000 gallons to $9.18 per 1,000 gallons, while the service charge would be increased from $7.76 to $8.10 per month. Commission Staff's recommended rates and charges, as shown on Staff's cash flow analysis attached to its Final Staff Internal Memorandum as Attachment 4, should generate an additional $60,989 in annual operating revenues and provide a cash surplus of $7,113, with a debt service coverage factor of 124.61%.

On March 19, 2009, counsel for the District filed a letter stating that the District had no objections to the recommendations contained in the March 17, 2009 Final Joint Staff Memorandum. Also attached to the letter was a copy of a letter dated March 10, 2009, from Mike Johnson, P.E., Program Manager, Clear Water SRF Program, WVDEP, to the District's Chairman, advising him that the District was authorized to advertise for bids for the project at issue in this proceeding.

On March 24, 2009, counsel for the District filed a copy of a letter dated December 23, 2008, from Mr. Johnson to the District's General Manager advising him of the approval of the plans and specifications for the project at issue in this proceeding.

On April 8, 2009, Mr. Robertson filed a Further Final Joint Staff Memorandum to which was attached a Second Further Final Staff Internal Memorandum dated April 2, 2009, prepared by Mr. Fowler and Mr. Lopez. Commission Staff reported that, subsequent to the preparation and filing herein of its Final Staff Internal Memorandum, it became aware of certain errors in said memorandum and attached Staff-Recommended Tariff. A brief explanation of said errors was provided and a corrected Staff-Recommended Tariff was attached to said memorandum.

DISCUSSION

Based upon a review of the District's certificate application and Commission Staff's recommendations set forth in the Final Joint Staff Memorandum, it is clear that the District's proposed improvements to its wastewater treatment facilities are needed to ensure the District's continued compliance with its existing NPDES Permit effluent limitations,

thereby avoiding violations detrimental to the environment and to persons and property downstream.

Additionally, the rates recommended by Commission Staff in this case appear to be reasonable and were designed to cover the District's O&M expenses and meet all of the District's debt service requirements and, accordingly, will be approved.

The financing for the proposed project, consisting of an $893,765 loan from the WVDEP for a term of twenty (20) years at an annual interest rate of two percent (2%) with a one percent (1%) administrative fee, is reasonable and will be approved. The Staff-recommended project rate increase will provide sufficient, but not more than sufficient, revenue to cover the District's project-related O&M expenses and all of the District's debt service requirements and will be approved.

FINDINGS OF FACT

1. On December 23, 2008, the Harpers Ferry-Bolivar Public Service District filed an application for a certificate of convenience and necessity to install a belt filter press system to replace the existing sludge drying beds at the District's wastewater treatment plant in Jefferson County, West Virginia. The proposed project will be financed by a West Virginia Department of Environmental Protection loan in the amount of $893,765 at a two percent (2%) interest rate for a term of twenty (20) years with a one percent (1%) administrative fee. (See, December 23, 2008 filing; Final Joint Staff Memorandum and attachment filed March 17, 2009).

2. On January 7, 2009, the District filed an affidavit of publication reflecting that, in compliance with the Commission's December 23, 2008 Order, the Notice of Filing had been published on January 1, 2009, in the Spirit of Jefferson Advocate, a newspaper, duly qualified by the Secretary of State, published and of general circulation in Jefferson County, West Virginia. (See, affidavit filed January 7, 2009).

3. The District filed an Affidavit Regarding Separate Customer Notices of Request for Rate Increase as evidence of compliance with the individual customer notice requirements of Procedural Rule 10.3.d. (See, January 28, 2009 filing).

4. No protests or objections were received to the District's certificate application within the thirty-day response period, which expired on February 2, 2009, or as of the date of this Order. (See, case file generally).

5. The proposed belt filter system will replace the existing uncovered sludge drying beds which are inadequate and which limit the treatment plant's ability to properly dispose of excess biological solids, i.e., sludge, which, in turn, inhibits the plant's capacity to properly treat sewage. In addition to the current inadequacies of the drying beds, pending future upgrades at the treatment facility, due to the more stringent discharge requirements of the "Chesapeake Bay Standards," will require even more solids-handling capacity and will make the existing drying beds even less adequate and more of a hindrance to

efficient operation of the District's sewage treatment plant. (See, application filed December 23, 2008; Final Joint Staff Memorandum and attachment filed March 17, 2009).

6. The West Virginia Department of Environmental Protection reviewed and approved the project plans and specifications and issued a permit for the project. (See, letter filed March 24, 2009).

7. Commission Staff recommended that the District be granted a certificate of convenience and necessity to install the new belt filter press system at issue herein, and that the project financing, consisting of a West Virginia Department of Environmental Protection loan in the amount of $893,765, at a two percent (2%) interest rate for a term of twenty (20) years with a one percent (1%) administrative fee, be approved. (See, Final Joint Staff Memorandum and attachment filed March 17, 2009).

8. After review and investigation, to address increases associated with the District's proposed installation of a new belt filter press system, Commission Staff recommended rates which will result in an average bill of $41.58 per month based on 4,000 gallons of water usage per month. The Staff-recommended rates should produce a cash flow surplus of $7,113, with a debt service coverage factor of 124.61%. (See, Final Joint Staff Memorandum and attachment filed March 17, 2009; Further Final Joint Staff Memorandum and attachment filed April 8, 2009).

9. The District had no objections to the recommendations contained in the March 17, 2009 Final Joint Staff Memorandum. (See, letter filed March 19, 2009).

CONCLUSIONS OF LAW

1. The public convenience and necessity requires the issuance of a certificate of convenience and necessity to the Harpers Ferry-Bolivar Public Service District to install a belt filter press system to replace the existing sludge drying beds at the District's wastewater treatment plant in Jefferson County, West Virginia.

2. It is reasonable to approve the financing for the project, which consists of a West Virginia Department of Environmental Protection loan in the amount of $893,765 at a two percent (2%) interest rate for a term of twenty (20) years with a one percent (1%) administrative fee.

3. Under the particular facts and circumstances of this case, and considering the recommendations by Commission Staff, it is reasonable and appropriate to approve the Staff-recommended rates, attached hereto as Appendix A, to become effective for all services rendered by the District on and after the date of substantial completion of the subject wastewater treatment plant upgrade project.

4. Since no protests were filed after proper notice of the application was given, a certificate of convenience and necessity should be granted to the Harpers Ferry-Bolivar Public Service District for the proposed project, as recommended by Commission Staff, without need for a formal hearing.

ORDER

IT IS, THEREFORE, ORDERED that the application filed herein on December 23, 2008, by the Harpers Ferry-Bolivar Public Service District for a certificate of convenience and necessity to install a belt filter press system to replace the existing sludge drying beds at the District's wastewater treatment plant in Jefferson County, West Virginia, be, and hereby is, granted.

IT IS FURTHER ORDERED that the financing for the project, consisting of a West Virginia Department of Environmental Protection loan in the amount of $893,765 at two percent (2%) interest rate for a term of twenty (20) years with a one percent (1%) administrative fee, be, and hereby is, approved.

IT IS FURTHER ORDERED that the Staff-recommended rates and charges, attached hereto as Appendix A, be, and hereby are, approved for use by the District on and after the date of substantial completion of the project certificated herein.

IT IS FURTHER ORDERED that the District file an original and at least five (5) copies of a revised tariff reflecting the rates set forth in Appendix A within thirty (30) days of the date of substantial completion of the project certificated herein.

IT IS FURTHER ORDERED that Harpers Ferry-Bolivar Public Service District submit a certificate of substantial completion for the project from its engineer as soon as it becomes available.

IT IS FURTHER ORDERED that Harpers Ferry-Bolivar Public Service District file a copy of the engineer's certified tabulation of bids for the project within ten (10) days of the bid-opening date.

IT IS FURTHER ORDERED that, if there are any changes in the plans and/or scope of the project or if a change in financing affects rates, Harpers Ferry-Bolivar Public Service District obtain Commission approval of such changes prior to commencing construction.

IT IS FURTHER ORDERED that, if there are changes in the project cost or financing that do not affect rates, Harpers Ferry-Bolivar Public Service District file herein an affidavit duly executed by its accountant verifying that the District's rates and charges are not affected.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, Harpers Ferry-Bolivar Public Service District comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

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

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

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

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

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

John P. Carter

John P. Carter
Administrative Law Judge

JPC:cdk
082118a.wpd

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
CASE NO. 08-2118-PSD-CN
APPROVED RATES

APPLICABILITY
Applicable within the entire territory served.

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

SERVICE CHARGE - $9.18 per month

USAGE CHARGE - $8.10 per 1,000 gals.

MINIMUM CHARGE
No bill will be rendered for less than $9.18 per month, which is the service charge.

FLAT RATE CHARGE (customers with non-metered water supply)
Equivalent of 4,000 gallons of water usage or $41.58 per month

DELAYED PAYMENT PENALTY
The above schedule 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.

DISCONNECT-RECONNECT-ADMINISTRATIVE FEES
Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement, a disconnection fee of $20.00 shall be charged. In the event the delinquent sewer bill is collected by the water utility, an administrative fee of $20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement, is reconnected, a reconnection fee of $20.00 shall be charged.

TAP FEE
The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $300.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

RETURNED CHECK CHARGE
A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

INCREMENTAL COST OF SEWAGE TREATED

$1.16 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SECURITY DEPOSIT

A deposit of $50.00 or 2/12ths of the average annual usage of the applicant's specific customer class, whichever is greater.

SURCHARGE FORMULA TO BE APPLIED IN THE CASE OF A CUSTOMER PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to unusual users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from unusual users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
Bi = weight of BOD from unusual users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeably to total solids in dollars per pound
Si = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Utility, should not be introduced into the sewer system need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and an audit of the Utility records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the Utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

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 16th day of April 2009

GENERAL ORDER NO. 182.09
Public Service Commission intended procedures concerning water and sewer projects that are funded with federal stimulus funds.

COMMISSION ORDER

Earlier this year, Congress enacted and the President signed the *American Recovery and Reinvestment Act of 2009*. Under this legislation, the State of West Virginia is to receive certain stimulus funds, a portion of which will be dedicated to the construction of water and sewer infrastructure. The Public Service Commission ("Commission") has received information from various funding agencies. The State Bureau for Public Health through its drinking water treatment revolving fund will have approximately $19.5 million for water projects. In addition, the State Department of Environmental Protection through the clean water state revolving fund will have approximately $61 million for sewer projects. Both of these state agencies have indicated that they intend to have the projects bid by August 2009 and contracts awarded by October 2009. In addition, certain other stimulus funds for water and sewer projects will be administered by the U.S. Department of Agriculture, Rural Utilities Service.

Although the Commission is not a funding source for the stimulus funds, it will nonetheless be called upon to process utility applications for certificates of public convenience and necessity ("certificates") to authorize the construction of stimulus-funded water and sewer projects. Given the aggressive schedule planned by the funding agencies, and the requirement in the federal law that water and sewer projects be "shovel ready," meaning under construction within a quick time line, the Commission intends to expedite these applications to the greatest extent possible consistent with existing State Law.

As a preliminary observation, the Commission would stress that applications must be complete and the statutory thirty-day notice to the public must be given at the outset of the application. Failure to file complete applications or failure to provide timely public notice will lead to delays in processing projects and jeopardize the ability to receive federal stimulus funds. The Commission anticipates that it will receive (i) new applications for water and sewer projects using federal stimulus funds, (ii) amendments to pending applications

containing some measure of federal stimulus funds, and (iii) petitions to reopen certificates already issued seeking to amend funding by including federal stimulus funds. The Commission issues this General Order to inform the public, regulated utilities, attorneys who practice before the Commission, funding agencies, and the staff of the Commission of its intended procedures and processes.

With respect to new stimulus project applications, the Commission intends that applicants and Staff observe the following procedures. At the outset, the Commission again stresses that it is essential that a utility project sponsor file a complete application and provide timely public notice of its application.

1. Staff assigned to the case should immediately review the filing to determine if it is complete. The Initial Joint Staff Memorandum should be filed within ten days.[1]

2. If the filing is complete and does not require an increase in rates for the project, Staff should file its Final Joint Staff Memorandum in thirty-five days which allows for the protest period assuming the applicant has timely published notice.

3. If the filing is complete and includes a proposed increase in rates for the project, Staff may deem it necessary to file a data request for items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days. The applicant should expedite its response to Staff's requests and Staff should file its Final Joint Staff Memorandum within forty-five to sixty days

4. If the filing is not complete, irrespective of whether or not the application seeks an increase in rates, Staff should file a data request, if necessary, for the items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days. The applicant should expedite its responses to Staff's requests and Staff should file its Final Joint Staff Memorandum within forty-five to sixty days.

5. If rates are required for the project and a rate change has not been included with the application:

   A. For municipalities, the processing time is out of the Commission's ability to control. Staff needs to determine where the municipality is in the ordinance process and what else is needed to process the case. This should all be part of the Initial Joint Staff Memorandum to let the Commission know if the case can be processed or needs dismissed. (Certificates and rate ordinances need to be coordinated for a municipal appeal.) Data requests should still be filed within the ten-day period.

---

[1] Days in this Order are calendar days. Filings due on weekends or holidays are due the next working day.

B. Public service districts ("districts") that need rates for the project can follow steps 1 and 3 or 4 above.

C. Districts that require rates outside of the project and are in default on bonds cannot move forward. Staff must address this in its initial memorandum.

5. For newly-filed water or sewer applications for certificates of convenience and necessity where the funding is described at the time of the filing as Stimulus Funding the Commission shall designate the filings as "SCN." The Commission, its Staff and Administrative Law Judges, will process those designated filings as expeditiously as possible.

The stimulus funds may be used to replace existing funding for projects that are ready to proceed, allowing the State of West Virginia to fund more projects than planned and provide an enhanced investment in water and sewer infrastructure to unserved and under-served areas of the State. To expedite the processing of projects that have already received a certificate and are eligible to receive stimulus funds, the Commission plans the following process and procedures:

6. In instances where municipalities or municipal water or sewer boards ("municipal utilities") have already been granted certificates, and in the event the municipality is awarded a stimulus assistance funding package to replace either existing grant or loan funding from another source, the municipal utility shall only be required to file with the Commission a letter from the funding agency that describes the change in the project funding. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action by the Commission.

7. Similarly, for districts that are awarded a stimulus assistance funding package equivalent to the existing grant money from another source, that has no impact on rates, the district shall only be required to file with the Commission a letter from the funding agency that describes the change in the project funding. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action by the Commission.

8. In the event that a district is awarded a stimulus assistance funding package and the benefit to the customers of such improved financing is lower project costs, the district will only be required to file a petition to reopen the original formal case granting the certificate in order that the Commission may review the rates established for the project.

The Commission will provide for such petitions to reopen to be handled in an expedited manner. To that end, the district will be required to file with its petition to reopen a letter from the funding agency that describes the change in project funding, specifically setting forth the newly-committed funding and an accompanying calculation by the district

of the impact to its rates together with supporting documentation. Upon the filing of this information, Staff will perform a review of the revised project funding and rate calculations and file a final recommendation with the Commission stating its recommended rates as soon as possible, but no later than ten days after receipt of the petition. The Commission will issue an order as soon thereafter as possible.

9. For districts that are awarded a stimulus assistance funding package to supplement funding to deal with a cost overrun in whole or part, that has no impact on rates, the district may utilize the enhanced funding to first fund any project alternatives that were reviewed as either deducts or adducts that were approved as a part of the original certificate, contingent upon funding, in order that all portions of the project can be constructed. In this event, the district shall be required to file with the Commission a letter from the funding agency that describes both the change in the project funding and also notes the deducts or adducts that will be funded for construction. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action on its part.

The issuance of these guidelines should expedite these projects and the continuing effort to provide quality water and sewer service throughout the State of West Virginia. The Commission understands that there will be instances and situations where events will disrupt these intended procedures; however, the Commission expects all parties to use their best efforts to process these cases in a timely manner. Finally, given the aggressive time frame contemplated by the funding agencies and the intent to have bids out by August 2009, project applications should be filed no later than June 1, 2009, to avoid jeopardizing the timely consideration of those applications.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission give public notice of this order in a manner deemed most efficient and appropriate.

A True Copy, Teste:

Sandra Squire
Sandra Squire
Executive Secretary

go18209c.wpd

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

December 15, 2008

Mr. Raymond Biller, Chairman
Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

RE: Harpers Ferry-Bolivar PSD
C-544429

Dear Chairman Biller:

Our existing Clean Water SRF commitment of $769,479 was issued by this agency on January 23, 2008. We now understand that the project costs have been updated and an amount of $920,029 is being requested.

This agency is willing to increase its loan commitment to whatever amount is needed after receipt of bids and after a formal application is submitted for review. Please let me know if you have any further questions. We look forward to working with you to make this project a reality.

Should you have any questions, please do not hesitate to contact Rosalie Brodersen at 304/926-0499 extension #1608 or John Tingley at 304/926-0499 extension #1603.

Sincerely,

Mike Johnson

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

cc: Infrastructure and Jobs Development Council
Ms. Samme Gee, Jackson & Kelly
Alpha Associates, Inc.

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

November 6, 2008

Mr. Raymond Biller, Chairman
Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

RE: Harpers Ferry-Bolivar PSD
C-544429

Dear Chairman Biller:

This letter is in response to your October 22, 2008 letter requesting an extension to your existing CWSRF funding commitment for your sewer project. The existing commitment of $769,479 was issued by this agency on January 23, 2008 and had an expiration date of January 23, 2009. It is our understanding that the project scope has not changed.

Your letter included an updated project schedule. In accordance with that schedule, we will extend our binding commitment to May 31, 2009. Please let me know if you have any further questions. We look forward to working with you to make this project a reality.

Should you have any questions, please do not hesitate to contact Rosalie Brodersen at 304/926-0499 extension #1608 or John Tingley at 304/926-0499 extension #1603.

Sincerely,

Mike Johnson

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

cc: Infrastructure and Jobs Development Council
Ms. Samme Gee, Jackson & Kelly
Alpha Associates, Inc.

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
(304) 926-0495
(304) 926-0496 (fax)

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

January 23, 2008

Mr. Raymond Biller, Chairman
Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

RE: Harpers Ferry-Bolivar PSD
C-544429

Dear Chairman Biller:

This letter is to confirm our intention of providing the long-term financing through the State Revolving Fund (Fund) Program for the District's wastewater improvement project. The project is for an upgrade to the existing wastewater treatment plant.

We are hereby committing the amount of $769,479, to be issued at 2% interest, 1% annual administrative fee, for a term of 20 years. If the District's bonds have not been issued to the Fund prior to January 23, 2009, it is understood that the Fund reserves the right to discontinue processing the District's application and on that day, will have no further responsibilities or obligations hereunder.

Should you have any questions, please do not hesitate to contact Rosalie Brodersen at 304/926-0499 extension #1608 (rbrodersen@wvdep.org,) or John Tingley at 304/926-0499 extension #1603, (jtingley@wvdep.org).

Sincerely,

Mike Johnson

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

cc: Mr. Jeff Brady, IJDC
Ms. Samme Gee, Jackson & Kelly
Alpha Associates, Inc.

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street, S. E.
Charleston WV 25304
Telephone - 304 926-0495
Fax – 304 926 0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

MEMORANDUM

TO: Chris Jarrett, Executive Director
Water Development Authority
304/558-0299 [fax]

FROM: Rosalie M. Brodersen
Clean Water State Revolving Fund Program
304/926-0496 [fax]

DATE: July 8, 2009

SUBJECT: Bond Purchase Agreement for Harpers Ferry Bolivar PSD (ARRA)
C-544429
IJDC #2006S-928

CLOSING DATE: July 21, 2009

Series A (CWSRF Base Program)		Series B (ARRA)
$629,612	Loan Amount	$629,612
0%	Interest Rate	n/a (100% debt forgiveness)
20 years	Repayment Period	n/a
1.0%	Admin. Fee	n/a
September 1, 2010	Proj. Comp. Date	September 1, 2010
December 1, 2010	Repayment to Begin	n/a
March 1, 2010	Debt Service Schedule	n/a

NOTE: Closing contingent upon:
Final Title Opinion

cc: Samme Gee, Jackson & Kelly (email)

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince
Hurricane
Dwight Calhoun
Petersburg
Tim Stranko
Morgantown
Dave McComas
Prichard

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 8, 2006

RECEIVED
JUN 12 2006
ALPHA ASSOCIATES, INC.

Raymond Biller, Chairman
Harpers Ferry Bolivar Public
Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

Re: Harpers Ferry Bolivar Public Service District
Sewer Project 2006S-928

Dear Mr. Biller:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Harpers Ferry Bolivar Public Service District's (the "District") preliminary application regarding its proposed project to add sludge belt press to replace existing drying beds; repair scum removal equipment and screening system for influent chamber (the "Project").

Based on the findings of the Sewer Technical Review Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Infrastructure Council recommends that the District pursue a $696,412 Clean Water State Revolving Fund loan to fund this project. Please contact the WV Department of Environmental Protection office at 926-0495 for specific information on the steps the District needs to follow to apply for these funds. **Please note that this letter <u>does not</u> constitute funding approval from this agency.**

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

Sincerely,

Mark Prince

Enclosure
cc: Mike Johnson, P.E., DEP (w/o enclosure)
Region IX Planning & Development Council
Alpha Associates, Inc.

HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

BOND RESOLUTION

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HARPERS FERRY – BOLIVAR PARK PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND INSTALLATION OF IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, AND FURTHER AUTHORIZING THE REFINANCING OF A BANK LOAN THAT THE HARPERS FERRY – BOLIVAR PUBLIC SERVICE DISTRICT HAS OUTSTANDING WITH THE BANK OF CHARLES TOWN WHICH LOAN WAS OBTAINED IN 2005 TO PROVIDE PART OF REPLACEMENTS AND UPGRADES TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF HARPERS FERRY – BOLIVAR PUBLIC SERVICE DISTRICT, ALL THROUGH THE ISSUANCE BY THE DISTRICT OF $629,612 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND $629,612 IN AGGREGATE PRINCIPAL AMOUNT OF SERIES 2009 B (WVCWSRF PROGRAM/ARRA); 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 A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; RATIFYING, CONFIRMING AND APPROVING ACTIONS PREVIOUSLY TAKEN IN CONNECTION WITH SUCH BONDS, THE PROJECT TO BE FINANCED WITH THE PROCEEDS OF SUCH BONDS AND THE SITE OF THE DISTRICT'S SEWAGE TREATMENT PLANT; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF HARPERS FERRY - BOLIVAR 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, any Certificate of Determination (as hereinafter defined), or both, the "Bond Legislation") is adopted pursuant to the provisions of (i) Chapter 16, Article 13A, (ii) Chapter 22C, Article 2 and (iii) 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. Harpers Ferry - Bolivar Public Service District (the "Issuer") is a public service district and a public corporation and political subdivision of the State of West Virginia in Jefferson County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and installed improvements to the existing public sewerage system of the Issuer, consisting of the installation of a new belt filter press sludge processing system (to and necessary appurtenances relating thereto, together with all appurtenant facilities (collectively, the "Physical Project"), which constitute properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewer facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer. In addition, the Issuer presently has an outstanding loan with the Bank of Charles Town which the Issuer obtained in 2005 to fund part of the then replacement and upgrade of the Issuer's raw sewage screening facility (the "2005 Bank Note"), and it is deemed necessary and desirable that the Issuer refinance the 2005 Bank Note (such refinancing, the "Refinancing Project") (the Physical Project and the Refinancing Project collectively, the "Project").

C. The Issuer intends to permanently finance the costs of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of $1,259,224, in two series, being the (1) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the aggregate principal amount of $629,612 (the "Series 2009 A Bonds"), and the (2) Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), in the aggregate principal amount of $629,612 (the "Series 2009 B Bonds") (the Series 2009 A Bonds and the Series 2009 B Bonds collectively, the "Series 2009

Bonds"), to permanently finance the costs of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof, if any. 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 Bonds prior to and during acquisition and installation of the Physical Project and for a period not exceeding 6 months after completion of acquisition and installation of the Physical Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined), 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 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or installation of the Physical Project and the placing of same in operation, the refinancing of the 2005 Bank Note, 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 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 Physical Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2009 A Bonds and Series 2009 B Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA assistance agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), substantially in the form attached hereto as Exhibit A, with such changes, insertions and omissions, if any, as may be approved by the Chairman; and the execution of such final ARRA assistance agreement by the Chairman shall be conclusive evidence of such approval (the "Loan Agreement").

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge and source of and security for payment from the Net Revenues of the System, being the Issuer's Sewer Revenue Bonds, Series 1978, dated April 22, 1980, issued in the original aggregate principal amount of $485,000 (hereinafter, the "Prior Bonds").

The Series 2009 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects; provided, that separate Sinking Funds and Reserve Accounts shall secure each series of Bonds. Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holder of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds (and upon

payment of the 2005 Bank Note with a portion of the proceeds of the Series 2009 A Bonds), there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Resolutions.

H. The estimated revenues to be derived in each year following 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 Bonds and the Prior 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 Project, including without limitation, the acquisition, installation and operation of the Physical Project and the System and issuance of the Series 2009 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 Bonds or such final order will not be subject to appeal or rehearing.

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

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

"Act" means, collectively, (i) Chapter 16, Article 13A, (ii) Chapter 22C, Article 2 and (iii) 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 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 DEP and the Council under the Act.

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

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

"Bond Legislation," "Resolution," "Bond Resolution" or "Local Act" means this Bond Resolution and all orders and resolutions supplemental hereto or amendatory hereof, any Certificate of Determination, or all thereof.

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

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

"Certificate of Determination" has the meaning given it in Section 3.13 of this Resolution.

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

"Closing Date" means the date upon which there is an exchange of the Series 2009 Bonds for all or a portion of the proceeds of the Series 2009 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 Alpha Associates, Incorporated, Martinsburg, 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 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.

"DEP" means the West Virginia Department of Environmental Protection or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in Article IV hereof, 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 Harpers Ferry - Bolivar Public Service District, a public service district, public corporation and political subdivision of the State of West Virginia in Jefferson County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the ARRA Assistance Agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 A Bonds and Series 2009 B Bonds from the Issuer by the Authority, being substantially in the form attached hereto as Exhibit A, with such changes, insertions and omissions, if any, as may be approved by the Chairman; and the execution of such final ARRA assistance agreement by the Chairman shall be conclusive evidence of such approval.

"Net Proceeds" means the face amount of the Series 2009 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2009 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, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which 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.

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

"Prior Bonds" means the Issuer's Sewer Revenue Bonds, Series 1978.

"Prior Resolutions" means, collectively, the Resolutions authorizing the Prior Bonds.

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

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

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be

replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

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

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

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

"Registrar' means the bank or other entity designated as such in Article IV hereof, and its successors and assigns.

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

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

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2009 Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in the Reserve Accounts of the Series 2009 Bonds and the Prior Bonds.

"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 Bonds" means, collectively, the Series 2009 A Bonds and the Series 2009 B Bonds.

"Series 2009 A Bonds" means the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, authorized by this Resolution.

"Series 2009 A Bonds Project Fund" means the Series 2009 A Bonds Project 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 year or any succeeding year.

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

"Series 2009 B Bonds" means the Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), of the Issuer, authorized by this Resolution.

"Series 2009 B Bonds Project Fund" means the Series 2009 B Bonds Project Trust Fund established by Section 5.01 hereof.

"Series 2009 B Bonds Reserve Account" means the Series 2009 B Bonds Reserve Account authorized to be established by Section 5.02 hereof

"Series 2009 B Bonds Reserve Requirement" means $0.00.

"Series 2009 B Bonds Sinking Fund" means the Series 2009 B Bonds Sinking Fund authorized to be established by Section 5.02 hereof

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Series 2009 Bonds and the Prior Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid under the Loan Agreement for the Series 2009 A Bonds and Series 2009 B Bonds.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local

governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution.

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

"System" means the complete properties of the Issuer for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, improvements and extensions thereto hereafter constructed or acquired for said system from any sources whatsoever.

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

"2005 Bank Note" means the 2005 Bank Note as described in Section 1.02B hereof.

Additional terms and phrases are defined in this Resolution as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF THE PROJECT

Section 2.01. Authorization of the Project. There is hereby authorized and ordered the implementation of the Project at an estimated cost of $1,259,224, which includes the acquisition and installation of the Physical Project in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body, and the refinancing of the 2005 Bank Note. The proceeds of the Series 2009 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and installation of the Physical Project, in an amount and otherwise compatible with the financing plan submitted to the Authority, the DEP and the Council.

The cost of the Project is estimated to be $1,259,224, of which approximately $629,612 will be obtained from proceeds of the Series 2009 A Bonds and approximately $629,612 will be obtained from proceeds of the Series 2009 B 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 Bonds, funding the 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 Bonds and related costs, or any or all of such purposes, as determined by the Bond Legislation, there shall be and hereby are authorized to be issued negotiable Series 2009 Bonds of the Issuer. The Series 2009 Bonds shall be issued in two series, each as a single bond, designated respectively as "Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program)," in the principal amount of $629,612 and as "Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA)" in the principal amount of $629,612,, and each Series shall have such terms as set forth hereinafter. The proceeds of the Series 2009 A Bonds remaining after funding of the Reserve Account therefor, capitalizing interest, if any, on the Series 2009 A Bonds, and refinancing the 2005 Bank Note shall be deposited in or credited to the Series 2009 A Bond Project Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof. The proceeds of the Series 2009 B Bonds shall be deposited in or credited to the Series 2009 B Bond Project Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds.

A. Principal Amounts; Dates; Maturity Dates; Redemption Provisions; Interest Rates; Interest and Principal Payment Dates; Sale Prices.

Series 2009 A Bonds. The 2009 A Bonds shall be in the form of a single Bond, numbered AR-l, in the principal amount of $629,612. The Series 2009 A Bonds shall be dated the date of delivery thereof, shall finally mature December 1, 2030, 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 March 1, 2011, to and including December 1, 2030, 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 DEP, 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. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1.0% of the principal amount of the Series 2009 A Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

B. Series 2009 B Bonds. The 2009 B Bonds shall be in the form of a single Bond, numbered BR-l, in the principal amount of $629,612. The Series 2009 B Bonds shall be dated the date of delivery thereof, shall finally mature December 1 2020, and shall bear no interest. The principal of the Series 2009 B Bonds shall be payable quarterly by forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, to and including December 1, 2020, 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 B Bonds. The Series 2009 B Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, 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 B Bonds.

The Series 2009 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 Bonds, if any, shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

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

Section 3.03. Execution of Bonds. The Series 2009 Bonds shall be executed in the name of the Issuer by the Chairman, and the seal of the Issuer, if any, 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 Bonds shall cease to be such officer of the Issuer before the Series 2009 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 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. The Bond Registrar for the Series 2009 Bonds shall be the bank or other entity designated as such in Article IV hereof and its successors and assigns. No Series 2009 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the 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 Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2009 Bond shall be deemed to have

been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

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

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

The registered Series 2009 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 Bonds or transferring the registered Series 2009 Bonds is exercised, all Series 2009 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2009 Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2009 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, if any, on the Series 2009 Bonds or, in the case of any proposed redemption of Series 2009 Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date, if any, or redemption date.

Section 3.06. Bonds Mutilated. Destroyed. Stolen or Lost. In case any Series 2009 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations

and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 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 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2009 Bonds or the interest, if any, thereon.

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

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 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 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 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 Bonds.

Section 3.10. Form of Bonds. The text of each series of the Series 2009 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:

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(FORM OF SERIES 2009 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $629,612

KNOW ALL MEN BY THESE PRESENTS: The 21st day of July 2009, that HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Jefferson 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 TWENTY-NINE THOUSAND SIX HUNDRED TWELVE DOLLARS ($629,612), 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 March 1, 2011, to and including December 1, 2030, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of 1.0% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, as set forth on said EXHIBIT B.

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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated July 21, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewerage system of the Issuer (the "Physical Project"); (ii) to refinance an outstanding bank loan of the Issuer which was obtained in 2005 to provide part of then replacements and upgrades to the existing public sewerage system of the Issuer (the "Refinancing Project") (the Physical Project and the Refinancing Project

collectively, the "Project"); (iii) to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iv) to pay certain costs of issuance of the Bonds and related costs. The existing public sewerage system of the Issuer, the Physical 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 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1978, DATED APRIL 22, 1980, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $485,000 (THE "PRIOR BONDS"); AND (2) SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA), DATED JULY 21, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $629,612 (THE "SERIES 2009 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 B Bonds and the Prior Bonds 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 prior to or on a parity with the Bonds, including the Series 2009 B Bonds and the Prior Bonds. 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 United Bank, Inc., 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 money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such 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.

[Remainder of Page Intentionally Blank]

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

[SEAL, IF ANY]

_____
Chairman

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: _____, 2009.

UNITED BANK, INC.,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

M0596509

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

(FORM OF SERIES 2009 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

No. BR-I $629,612

KNOW ALL MEN BY THESE PRESENTS: The 21st of July, 2009, that HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Jefferson 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 TWENTY-NINE THOUSAND SIX HUNDRED TWELVE DOLLARS ($629,612), 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 forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, to and including December 1, 2020, 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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated July 21, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewerage system of the Issuer (the "Physical Project" and, together with the Refinancing Project described in the Bond Legislation (defined below), the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Physical 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 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1978, DATED APRIL 22, 1980, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $485,000 (THE "PRIOR BONDS"); AND (2) SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), DATED JULY 21, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $629,612 (THE "SERIES 2009 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 A Bonds and the Prior Bonds, from any monies in the reserve account authorized to be created under the Bond Legislation for the Bonds (the "Series 2009 B 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 B 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 prior to or on a parity with the Bonds, including the Series 2009 A Bonds and the Prior Bonds. 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 United Bank, Inc., 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 money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Physical 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.

[Remainder of Page Intentionally Blank]

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

[SEAL, IF ANY]

_____
Chairman

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: _____, 2009.

UNITED BANK, INC.,
as Registrar

_____
Authorized Officer

M0596509

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(37) $		(55) $	
(38) $		(56) $	
(39) $		(57) $	
(40) $		(58) $	
(41) $		(59) $	
(42) $		(60) $	
(43) $		(61) $	
(44) $		(62) $	
(45) $		(63) $	
(46) $		(64) $	
(47) $		(65) $	
(48) $		(66) $	
(49) $		(67) $	
(50) $		(68) $	
(51) $		(69) $	
(52) $		(70) $	
(53) $		(71) $	
(54) $		(72) $	

TOTAL $_____

M0596509

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2009 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, if any, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation. Without limiting the generality of the foregoing, the Issuer hereby specifically approves Schedules X and Y attached to the Loan Agreement, and a certified copy of this Resolution, indicating such approval, shall be submitted to the Authority.

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

Section 3.13. Certificate of Determination. It is the intention of this Board for the Series 2009 Bonds to be purchased by the Authority pursuant to the Loan Agreement. The Loan Agreement, in substantially the form attached as Exhibit A shall be incorporated herein by reference, and any inconsistencies between this Resolution and the Loan Agreement shall be resolved in favor of the Loan Agreement. If the Authority or the DEP requires any change to the provisions of this Resolution in order to purchase the Series 2009 Bonds, such change or changes shall be set forth in a Certificate of Determination executed by the Chairman of this Board and, upon such execution and filing of such Certificate in the official records of the Issuer, such change or changes shall become a part of this Resolution as if included in this Resolution upon its original adoption.

ARTICLE IV

DESIGNATION OF REGISTRAR, PAYING AGENT AND DEPOSITORY BANK

Section 4.01. Designation of Registrar. The Issuer does hereby appoint and designate United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Series 2009 Bonds 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 4.02. Designation of Paying Agent. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent (the "Paying Agent") for the Series 2009 Bonds.

Section 4.03. Designation of Depository Bank. The Issuer does hereby appoint and designate the Bank of Charles Town, Charles Town, West Virginia, to serve as Depository Bank (the "Depository Bank") for the Series 2009 Bonds.

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

(1) Revenue Fund (established by the Prior Resolutions);

(2) Renewal and Replacement Fund (established by the Prior Resolutions);

(3) Series 2009 A Bonds Project Fund;

(4) Series 2009 B Bonds Project Fund; and

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued) or authorized to be created upon any requirement therefor 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) Prior Bonds Sinking Fund (established by Prior Resolution);

(2) Prior Bonds Reserve Account (established by Prior Resolution);

(3) Series 2009 A Bonds Sinking Fund;

(4) Series 2009 A Bonds Reserve Account;

(5) Series 2009 B Bonds Sinking Fund;

(6) Series 2009 B Bonds Reserve Account;

Section 5.03. System Revenues; Flow of Funds.

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

(1) The Issuer shall first, each month, pay from the monies in the Revenue Fund all current 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, as appropriate, the amounts required to pay interest on the Prior Bonds, as required by the Prior Resolutions.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission, as appropriate, the amounts required to pay principal of the Prior Bonds, as required by the Prior Resolutions; (ii) remit to the Commission, commencing 4 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; and (iii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, if any, for deposit in the Series 2009 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission, as appropriate, the amounts required by the Prior Resolutions for deposit in the respective Reserve Accounts for the Prior Bonds; (ii) remit to the Commission, commencing 4 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; and (iii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, if not fully funded upon issuance of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 B Bonds Reserve Requirement, if any; provided that, no further payments shall be made into the Series 2009 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 B Bonds Reserve Requirement.

(5) 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, a sum equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Resolutions and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

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

All investment earnings on monies in the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund, and the Series 2009 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during installation of the Physical Project, be deposited in the respective Bond Project Funds, and following completion of installation of the Physical 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 the Series 2009 B Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2009 A Bonds Reserve Account and the Series 2009 B Bonds Reserve Account which result in a reduction in the balance therein to below the respective Reserve Requirements 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 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund, or the Series 2009 B Bonds Reserve Account when the aggregate amount

of funds therein are at least equal to the respective aggregate principal amount of the Series 2009 A Bonds and the Series 2009 B 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, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund, and the Series 2009 B 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, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund, and the Series 2009 B 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, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund, and the Series 2009 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 A Bonds and the Series 2009 B Bonds, respectively, under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest, if any, and reserve account payments with respect to the Series 2009 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. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement for the Series 2009 A Bonds.

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

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

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the respective parties 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 all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder. Also if on any monthly payment date the revenues are insufficient to place the required amount in each of the accounts described in Subsections (A)(3) or (4), respectively, the deposits into each of the accounts shall be made in proportion to the amounts due.

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

ARTICLE VI

BOND PROCEEDS; PROJECT DISBURSEMENTS

Section 6.01. Application of Bond Proceeds: Pledge of Unexpended Proceeds. From the monies received from the sale of the Series 2009 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 first be deposited with the Commission in the Series 2009 A Bonds Sinking Fund, $0.00, 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 installation of the Physical Project.

B. From the proceeds of the Series 2009 B Bonds, there shall first be deposited with the Commission in the Series 2009 B Bonds Sinking Fund, $0.00, as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 B Bonds for the period commencing on the date of issuance of the Series 2009 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

C. 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, $31,500, for funding the Series 2009 A Bonds Reserve Account.

D. Next, from the proceeds of the Series 2009 B Bonds, there shall be deposited with the Commission in the Series 2009 B Bonds Reserve Account, $0.00 for funding the Series 2009 B Bonds Reserve Account.

E. Next, from the proceeds of the Series 2009 A Bonds, the Issuer shall refinance the 2005 Bank Note.

F. 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 Project Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2009 A Bonds.

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

H. 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 and Series 2009 B Bonds shall be applied as directed by the DEP.

Section 6.02. Disbursements From the Bond Project Fund.

On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 2009 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments of all Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 A Bonds Project Fund or Series 2009 B Bonds Project Fund shall be made only after submission to and approval from the DEP, of a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement for the Series 2009 A Bonds and Series 2009 B Bonds, in compliance with the construction schedule.

Pending such application, monies in the respective Bond Project Funds shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the 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 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 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The payment of the debt service of the Series 2009 A Bonds and the Series 2009 B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the lien on such Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payment of the debt service of the Series 2009 A Bonds and the Series 2009 B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the lien on such Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 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 shall provide an opinion of counsel to the Issuer of 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 and approved and described in the Recommended Decision of the Public Service Commission of West Virginia entered May 7, 2009 in Case No. 08-2118-PSD-CN, and such rates are hereby adopted. The Issuer shall make any post-closing filing required by the Public Service Commission of West Virginia in connection with the Series 2009 Bonds and the Physical Project.

So long as the Series 2009 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 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.

The Issuer covenants not to reduce its approved customer rates for at least 18 months after completion of the Physical Project or (a) until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses or (b) new rates have been established by order of the Public Service Commission of West Virginia. The Issuer shall notify the Authority and the DEP of any action to reduce rates during the 18 months following completion of the Physical Project.

Section 7.05. Sale of the System. So long as the Series 2009 Bonds and the Prior Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP, the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2009 Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the DEP, 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 Bonds. Any balance remaining after the payment of the Series 2009 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 the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property 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 said fund by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

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

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

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

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Resolution shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bonds pursuant to this Bond Legislation, without the

prior written consent of the Authority, the DEP 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 Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the 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, 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 eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the three (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 expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer 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 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 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 DEP, 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 DEP, the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition 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 DEP, 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 installation 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 installation.

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

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

The Issuer shall file with the DEP, the Council, the Authority, or any other original purchaser of the Series 2009 Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 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 0MB Circular 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 Bonds, and shall submit said report to the DEP, the Council and the Authority, or any other original purchaser of the Series 2009 Bonds. Such audit report submitted to the DEP, the Authority and the Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Physical Project and shall do, is doing or has done all things necessary to install the Physical 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 Physical Project and the Physical Project site heretofore or hereafter acquired shall at all times after such acquisition be and remain the property of the Issuer.

The Issuer shall permit the DEP, the Authority and the Council, or their agents and representatives, to enter and inspect the Physical Project site and Physical Project facilities at all reasonable times. Prior to, during and after completion of installation of the Physical Project, the Issuer shall also provide the DEP, 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 DEP, the Authority and the Council with respect to the System pursuant to the Act.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Loan Agreement for the Series 2009 A Bonds or as promulgated from time to time.

Section 7.09. Rates. So long as the Prior Bonds are outstanding, any requirement for rates set forth in the Prior Resolutions shall be met. Prior to the issuance of the Series 2009 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 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 2009 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2009 A Bonds Reserve Account, the Series 2009 B Reserve Account and the reserve accounts for obligations on a parity with or junior to the Series 2009 Bonds, including the Prior Bonds, are funded at least at the requirement therefore, 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 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 2009 Bonds, including the Prior 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 DEP, the Authority and the Council within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and

maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the DEP, the Authority and the Council and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, 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 DEP, the Authority and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP, the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the DEP, 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 DEP, the Authority and the Council covering the supervision and inspection of the development and installation of the Physical 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 DEP, the Authority, the Council and the Issuer at the completion of installation that installation of the Physical Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Physical Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement for the Series 2009 A Bonds as Exhibit A, to the DEP within 60 days of the end of the first year after the Physical Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the Site Regulations, to the DEP when the Physical Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Physical Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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

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

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 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 system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. Except as required by law, the Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same

rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7. 15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the 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:

(I) 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 installation of the Physical Project on a 100% basis (completed value form) on the insurable portion of the Physical Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the installation contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

B. The Issuer shall require all contractors engaged in the installation of the Physical 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 Physical 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 installation of the Physical Project to carry such worker's compensation coverage for all employees working on the Physical 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 Physical Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. 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 Division 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 Division 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 waterborne 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 will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

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

Section 7.18. Exchange Agreement. The Issuer shall proceed with diligence in consummating the transaction with the National Park Service described in the Agreement to Exchange Interests in Real Property related to the site for the Physical Project (the "Exchange Agreement"). The execution and delivery of such Exchange Agreement is hereby ratified, approved and confirmed, and the execution and delivery of the special warranty deed required by such Exchange Agreement and any and all other actions required to consummate the transaction described in the Exchange Agreement, including but not limited to the payment of money required to make the exchange of comparable value, are hereby authorized and directed.

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

Section 7.20. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the issuer will provide the DEP and 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 DEP, 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 will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule l5c2-12 (17 CFR Part 240).

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

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

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

ARTICLE VIII

INVESTMENT OF FUNDS

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, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

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

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 Bonds as a condition to issuance of the Series 2009 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 Bonds as may be necessary in order to maintain the status of the Series 2009 Bonds as public purpose 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 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, the Council or the DEP, as the case may be, from which the proceeds of the Series 2009 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, the Council or the DEP, 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 Bonds and any additional information requested by the Authority.

ARTICLE JX

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 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2009 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 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of a Bond;

(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; or

(4) If default occurs with the Prior Bonds.

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

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under 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 installation of the Physical 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 exercise.

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

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

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2009 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 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bonds, this Resolution may be amended or supplemented in any way by a Supplemental Resolution. Following issuance of the Series 2009 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 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein respectively pledged therefore 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 exclusion of interest, if any, on the Series 2009 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 Series 2009 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, a Supplemental Resolution, or the Series 2009 Bonds.

Section 11.04. Headings. 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, provided that, in the event of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.06. Covenant of Due Procedure, 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.

[Remainder of Page Intentionally Blank]

Adopted this 13th day of July, 2009.

Raymond E. Biller

Chairman

M0596509

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT on the 13th day of July, 2009.

Dated: July 21, 2009.

[SEAL, IF ANY]

James A. Addy
Secretary

M0596509

EXHIBIT A

Loan Agreement included in bond transcript as Document 2.5.

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

RESOLUTION OF THE BOARD OF THE HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO ACQUISITION AND INSTALLATION AND OTHER SERVICES FOR THE PROPOSED SEWAGE TREATMENT PROJECT AND AUTHORIZING PAYMENT THEREOF

WHEREAS, the Board of the Harpers Ferry-Bolivar Public Service District (the "Issuer") has reviewed the invoices attached hereto and incorporated herein by reference relating to the acquisition and installation of certain improvements to the sewage treatment facilities of the Issuer (the "Physical Project") and the repayment of a bank loan previously incurred in connection with such facilities (the "Refinancing Project" and, together with the Physical Project, the "Project"), to be funded by its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Series 2009 A Bonds") and its Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA) (the "Series 2009 B Bonds" and, together with the Series 2009 A Bonds, the "Bonds"), and finds as follows:

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

(b) Each item for which 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 due and owing.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Harpers Ferry-Bolivar Public Service District as follows:

1. Proceeds of the Series 2009 A Bonds in the amount necessary to pay in full the Refinancing Project (approximately $68,987) shall be paid to the Bank of Charles Town, and proceeds of the Series 2009A Bonds in the amount of $31,500 shall be deposited into the Reserve Account created for the Series 2009 A Bonds.

2. There is hereby authorized and, upon issuance of the Bonds and receipt of a portion of the proceeds thereof, directed the payment of the attached invoices, which are summarized on the DEP Payment Requisition Form attached as Exhibit A hereto. The allocation of such payments between the proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds shall be as directed by the DEP or, if the DEP makes no such direction, on a basis prorated between the amount of the proceeds of the Series 2009 A Bonds remaining after the payments described in Paragraph 1, above, and the amount of the proceeds of the Series 2009 B Bonds.

3. This Resolution is effective upon adoption.

Adopted this 13th day of July, 2009.

Raymond E. Biles
Chairperson and Member

Robert Hardy
Member

Member

{M0597022.1}

CERTIFICATION

Certified a true copy of the "First Draw Resolution" duly adopted by the Public Service Board of HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT on July 13, 2009.

Dated this 21st day of July, 2009.

[SEAL, IF ANY]

James A. Addy
Secretary

EXHIBIT A

Attach DEP Requisition Form and Invoices

DEP PAYMENT REQUISITION FORM

Rev 04/07/09

1. LOAN RECIPIENT/VENDOR:

NAME: Harpers Ferry - Bolivar PSD

ADDRESS: PO Box 235

Harpers Ferry, WV 25425

FEIN: 550594567001

DUNS: 829861520

2. SRF #: C-544429

3. INVOICE NUMBER: One

4. PERIOD COVERED BY THIS REQUEST (MO/DAY/YR)

FROM: (MO/DAY/YR) 04/26/2006

TO: (MO/DAY/YR) 07/09/2009

5. % OF PHYSICAL CONSTRUCTION COMPLETION 0%

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED	C) THIS REQUEST	D) TOTAL COLUMNS B&C	E) AGENCY USE ONLY SRF	E) AGENCY USE ONLY ARRA
1) CONSTRUCTION	$810,000	$0	$0	$0		
2) EQUIPMENT	$0	$0	$0	$0		
3) ENGINEERING						
a. Planning	$30,495	$0	$30,495	$30,495		
b. Design	$44,727	$0	$44,727	$44,727		
c. Const Basic	$10,182	$0	$0	$0		
d. Spec Services	$89,285	$0	$44,932	$44,932		
e. Inspection	$41,548	$0	$0	$0		
4) LEGAL	$58,000	$0	$47,959	$47,959		
5) ACCOUNTING	$7,500	$0	$5,500	$5,500		
6) ADMINISTRATIVE	$0	$0	$0	$0		
7) CONTINGENCY	$40,500	$0	$0	$0		
8) LOAN REPAYMENT	$68,987	$0	$68,987	$68,987		
9) RESERVE FUND	$31,500	$0	$31,500	$31,500		
10) CLOSING COSTS	$26,500	$0	$26,500	$26,500		
11) SUBTOTAL	$1,259,224	$0	$300,600	$300,600		
12) LESS PREVIOUSLY PAID						
13) INVOICE AMOUNT						

14) _____ _____

AUTHORIZED SIGNATURE DATE

Raymond E. Biller, Chaiman

TYPED OR PRINTED NAME AND TITLE

15) _____ _____

PERSON PREPARING FORM SIGNATURE DATE

Richard W. Klein, PE, Project Engineer

TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: **WV DEPARTMENT OF ENVIRONMENTAL PROTECTION**

_____ _____

PROJECT REVIEWER DATE

_____ _____

AUTHORIZED OFFICER DATE

	FUND	FY	ORG	ACT	OBJ CODE	GRANT #	PROJECT #	AMOUNT
128	3329	__	9455	___	0128	_____	_____	
128- ARRA	3329	__	9458	___	0128	_____	_____	
083	3329	__	9455	___	0083	_____	_____	
083-S	3329	__	9455	___	0083	_____	_____	
							TOTAL	

INSTRUCTIONS:

PAYMENT DATA

ATTACH ALL COPIES OF PROJECT INVOICES WHICH DOCUMENT THIS SPECIFIC PAYMENT REQUEST.

ITEM	ENTRY
1.	PROVIDE THE LEGAL NAME OF THE RECIPIENT ORGANIZATION, MAILING ADDRESS, FEIN NUMBER, AND DUNS NUMBER.
2.	FILL IN PROJECT NUMBER ASSIGNED BY THE SRF PROGRAM.
3.	INVOICE NUMBERS SHOULD BE IN SEQUENTIAL ORDER BEGINNING WITH REQUEST #1.
4.	THIS SHOULD REFLECT THE TIME FRAME COSTS COVERED BY PAYMENT REQUISITION.
5.	THE PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETED, INCLUDING STORED MATERIALS.

CLASSIFICATION

COLUMNS	ENTRY
COLUMN A	SHOW THE SRF APPROVED BUDGET BY LINE ITEM.
COLUMN B	SHOW THE CUMULATIVE TOTAL COST PREVIOUSLY APPROVED FOR REIMBURSEMENT. (THIS WILL BE COLUMN E OF THE PRIOR INVOICE)
COLUMN C	SHOW AMOUNT REQUESTED FOR THIS REIMBURSEMENT REQUEST (COST INCURRED SINCE LAST INVOICE)
COLUMN D	THE SUM OF COLUMNS B & C.
COLUMN E	**STATE AGENCY USE ONLY - DO NOT COMPLETE**
LINES 12 + 13	**DO NOT COMPLETE**

SIGNATURE BLOCK

ITEM	ENTRY
14.	THE AUTHORIZED REPRESENTATIVE MUST SIGN AND DATE THREE ORIGINAL FORMS OF EACH PAYMENT REQUEST. THE INVOICE DATE CAN BE NO SOONER THAN THE LAST DAY OF THE PERIOD COVERED. (BLOCK 4)
15.	THE PERSON WHO PREPARES THE PAYMENT REQUEST MUST SIGN AND DATE THREE ORIGINAL FORMS.

SUBMIT PAYMENT REQUEST FORM IN TRIPLICATE
AND ONE SET OF INOVICES TO
DEP, DIVISION OF WATER & WASTE MANAGEMENT
STATE REVOLVING FUND PROGRAM
601 57TH STREET, S.E.
CHARLESTON, WV 25304-2345
ATTN: ROSALIE BRODERSEN

SRF-ARRA
(04/02/09)

ARRA ASSISTANCE AGREEMENT

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

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT (C-544429/2006S-928)
(Local Government)

W I T N E S S E T H:

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

WHEREAS, the United States Congress has provided additional capitalization grant funding under the Clean Water Act through the American Recovery and Reinvestment Act of 2009 (the "ARRA");

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act and the ARRA;

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

WHEREAS, the ARRA provides that at least fifty percent (50%) of the funds provided through the capitalization grant be provided as negative interest loans or principal forgiveness (the "ARRA Assistance");

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

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act, the ARRA and the Act;

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

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

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

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with

moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

1.11 "System" means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

ARTICLE II

The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

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

2.5 The Local Government shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Government shall permit the Authority and DEP, acting by and through their Directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Government shall submit to the Authority and DEP such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

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

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

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

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this ARRA Assistance Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

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

2.12 The Local Government, commencing on the date contracts are executed for the 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 B and incorporated herein by reference, and forward a copy by the 10th of each month to DEP and the Authority.

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

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

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

(a) The Local Government shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

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

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

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

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

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

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

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

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

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of

execution of this ARRA Assistance Agreement by the Authority or such later date as is agreed to in writing by DEP.

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

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

(ii) unless waived or modified by Schedule X and to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on

the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

(ii) Unless waived in Schedule X, 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 Local Government shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

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

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

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

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

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that 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 Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

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

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

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP 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;

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

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted 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 nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees

paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

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

ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this ARRA Assistance Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement.

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

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this ARRA Assistance Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this ARRA Assistance Agreement.

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

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

ARTICLE VII

Miscellaneous

7.1 Schedules X and Y shall be attached to this ARRA Assistance Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this ARRA Assistance Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this ARRA Assistance Agreement, and this ARRA Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This ARRA Assistance Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this ARRA Assistance Agreement.

7.4 No waiver by any party of any term or condition of this ARRA Assistance Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this ARRA Assistance Agreement.

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

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

7.7 This ARRA Assistance Agreement shall terminate upon the earlier of:

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

(ii) 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 DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

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

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

IN WITNESS WHEREOF, the parties hereto have caused this ARRA Assistance Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

(SEAL)

By: _____
Its: Chairman
Date: July 21, 2009

Attest:

_____
Its: Secretary

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: _____
Its: Acting Director
Date: July 21, 2009

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: July 21, 2009

Attest:

_____
Its: Secretary-Treasurer

{C1564406.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

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

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

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

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

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

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

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

EXHIBIT C

PAYMENT REQUISITION FORM

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

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify 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 meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the ARRA Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), 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 the DEP and any change orders approved by the Issuer, the DEP 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 Schedule A attached hereto as Exhibit

A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) the Issuer has received the Buy American Certificate from each contractor; (x) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the ARRA Assistance Agreement; (xi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

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

By _____
West Virginia License No.

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

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

EXHIBIT E

SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

The Local Government shall include the following covenants in its bond authorizing documents:

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

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and as approved by DEP.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42

U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved customer rates for at least eighteen months after completion of the Project or (a) until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses or (b) new rates have been established by order of the Public Service Commission. The Local Government shall notify the Authority and the DEP of any action to reduce rates during the eighteen months following completion of construction of the Project.

EXHIBIT F

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 Local Government] on [Date].

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

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

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

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA assistance agreement dated _____, ____, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the ARRA Assistance 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 principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the ARRA Assistance 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 Local Government on _____, as supplemented by the supplemental

resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the ARRA Assistance Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

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

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

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the ARRA Assistance Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

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

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

A. Series A Bonds (CWSRF Base Program)

Principal Amount of Local Bonds $629,612
Purchase Price of Local Bonds $629,612

The Local Bonds shall bear no interest. Commencing December 1, 2010, principal of the Local Bonds is payable quarterly, with an administrative fee of 1.0%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

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

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

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

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government: none.

Number of New Customers to Be Served: 0
Location: N/A

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government: Harpers Ferry-Bolivar Public Service District Sewer Revenue Bonds, Series 1978, dated April 22, 1980, issued in the original aggregate principal amount of $485,000.

B. Series B Bonds (ARRA)

Principal Amount of Local Bonds	$629,612
Purchase Price of Local Bonds	$629,612

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. Principal forgiveness shall begin on December 1, 2010 and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached hereto and incorporated herein by reference.

The Local Bonds are fully registered in the name of the Authority.

The Local Government shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of this Agreement for at least the term of the Local Bonds.

The Local Government shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

SCHEDULE Y

DEBT SERVICE SCHEDULES

BOND DEBT SERVICE

Harpers Ferry Bolivar PSD

Series A Bond

20 Years, 0% interest rate, 1% admin fee

Delivery date: July 21, 2009

Period Ending	Principal	Interest	Debt Service
7/21/2009			
3/1/2011	7,871		7,871
6/1/2011	7,871		7,871
9/1/2011	7,871		7,871
12/1/2011	7,871		7,871
3/1/2012	7,871		7,871
6/1/2012	7,871		7,871
9/1/2012	7,871		7,871
12/1/2012	7,871		7,871
3/1/2013	7,871		7,871
6/1/2013	7,871		7,871
9/1/2013	7,871		7,871
12/1/2013	7,870		7,870
3/1/2014	7,870		7,870
6/1/2014	7,870		7,870
9/1/2014	7,870		7,870
12/1/2014	7,870		7,870
3/1/2015	7,870		7,870
6/1/2015	7,870		7,870
9/1/2015	7,870		7,870
12/1/2015	7,870		7,870
3/1/2016	7,870		7,870
6/1/2016	7,870		7,870
9/1/2016	7,870		7,870
12/1/2016	7,870		7,870
3/1/2017	7,870		7,870
6/1/2017	7,870		7,870
9/1/2017	7,870		7,870
12/1/2017	7,870		7,870
3/1/2018	7,870		7,870
6/1/2018	7,870		7,870
9/1/2018	7,870		7,870
12/1/2018	7,870		7,870
3/1/2019	7,870		7,870
6/1/2019	7,870		7,870
9/1/2019	7,870		7,870
12/1/2019	7,870		7,870
3/1/2020	7,870		7,870
6/1/2020	7,870		7,870
9/1/2020	7,870		7,870
12/1/2020	7,870		7,870
3/1/2021	7,870		7,870
6/1/2021	7,870		7,870
9/1/2021	7,870		7,870
12/1/2021	7,870		7,870

BOND DEBT SERVICE

Harpers Ferry Bolivar PSD

Series A Bond

20 Years, 0% interest rate, 1% admin fee

Delivery date: July 21, 2009

Period Ending	Principal	Interest	Debt Service
3/1/2022	7,870		7,870
6/1/2022	7,870		7,870
9/1/2022	7,870		7,870
12/1/2022	7,870		7,870
3/1/2023	7,870		7,870
6/1/2023	7,870		7,870
9/1/2023	7,870		7,870
12/1/2023	7,870		7,870
3/1/2024	7,870		7,870
6/1/2024	7,870		7,870
9/1/2024	7,870		7,870
12/1/2024	7,870		7,870
3/1/2025	7,870		7,870
6/1/2025	7,870		7,870
9/1/2025	7,870		7,870
12/1/2025	7,870		7,870
3/1/2026	7,870		7,870
6/1/2026	7,870		7,870
9/1/2026	7,870		7,870
12/1/2026	7,870		7,870
3/1/2027	7,870		7,870
6/1/2027	7,870		7,870
9/1/2027	7,870		7,870
12/1/2027	7,870		7,870
3/1/2028	7,870		7,870
6/1/2028	7,870		7,870
9/1/2028	7,870		7,870
12/1/2028	7,870		7,870
3/1/2029	7,870		7,870
6/1/2029	7,870		7,870
9/1/2029	7,870		7,870
12/1/2029	7,870		7,870
3/1/2030	7,870		7,870
6/1/2030	7,870		7,870
9/1/2030	7,870		7,870
12/1/2030	7,871		7,871
	629,612		**629,612**

Plus a quarterly administrative fee of $796.85
for a total administrative fee of $63,748.00

BOND DEBT SERVICE
Harpers Ferry Bolivar PSD
Series B Bond
Delivery Date: 21-Jul-09
10 Years

Period Ending	Debt Service	Principal Forgiveness
7/21/2009		
3/1/2011	-15,741	-15,741
6/1/2011	-15,741	-15,741
9/1/2011	-15,741	-15,741
12/1/2011	-15,741	-15,741
3/1/2012	-15,741	-15,741
6/1/2012	-15,741	-15,741
9/1/2012	-15,741	-15,741
12/1/2012	-15,741	-15,741
3/1/2013	-15,741	-15,741
6/1/2013	-15,741	-15,741
9/1/2013	-15,741	-15,741
12/1/2013	-15,740	-15,740
3/1/2014	-15,740	-15,740
6/1/2014	-15,740	-15,740
9/1/2014	-15,740	-15,740
12/1/2014	-15,740	-15,740
3/1/2015	-15,740	-15,740
6/1/2015	-15,740	-15,740
9/1/2015	-15,740	-15,740
12/1/2015	-15,740	-15,740
3/1/2016	-15,740	-15,740
6/1/2016	-15,740	-15,740
9/1/2016	-15,740	-15,740
12/1/2016	-15,740	-15,740
3/1/2017	-15,740	-15,740
6/1/2017	-15,740	-15,740
9/1/2017	-15,740	-15,740
12/1/2017	-15,740	-15,740
3/1/2018	-15,740	-15,740
6/1/2018	-15,740	-15,740
9/1/2018	-15,740	-15,740
12/1/2018	-15,740	-15,740
3/1/2019	-15,740	-15,740
6/1/2019	-15,740	-15,740
9/1/2019	-15,740	-15,740
12/1/2019	-15,740	-15,740
3/1/2020	-15,740	-15,740
6/1/2020	-15,740	-15,740
9/1/2020	-15,740	-15,740
12/1/2020	-15,741	-15,741
	-629,612	**-629,612**

Harpers Ferry/ Bolivar PSD
P. O. BOX 235
192 LAKE QUIGLEY DRIVE
HARPERS FERRY, WEST VIRGINIA 25425
(304)-535-2390 FAX (304)-535-2524

THE HARPERS FERRY/BOLIVAR PUBLIC SERVICE DISTRICT CONDUCTED THE JULY MEETING AT THE WASTEWATER TREATMENT PLANT LOCATED AT 192 LAKE QUIGLEY DRIVE, HARPERS FERRY, WEST VIRGINIA. THE MEETING WAS HELD JULY 13th 2009

Those in attendance were:

Raymond Biller-Chairman
Robert Hardy-Treasurer
James A. Addy-Secretary
James Williams- Operations Supervisor
David Tennant-Plant Operator
Mrs. Willis-Miller-Jackson & Kelly

Chairman Biller called the meeting to order at 8:30 a.m.

Motion by Mr. Hardy, seconded by Mr. Addy to approve the June minutes, approved.

Motion by Mr. Hardy, seconded by Mr. Addy to approve the June financial statements, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to approve Rules and Procedures, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to accept the bond resolution, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to accept the first draw resolution, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to accept the automatic withdraw on new bond payment, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to send an invitations to the NPS superintendent, Mr. Kunkle, Mr. Kline, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to table the COLA pay raise until later, approved.

Mr. Williams talked about the collection agency we are going to use, and the progress.

Motion by Mr. Hardy, seconded by Mr. Biller to turn in the new moved away customers list to the collections agency, approved

Mr. Williams talked about the possibility to send us another bill on financing the project.

Motion by Mr. Hardy, seconded by Mr. Biller to adjust the sewer bills for filling up swimming pools to Mr. Milbourne for $ 31.05. To Mr. Staubs for $ 42.01. To Mr. Pickett for $ 43.39. To Mrs. Cain for $ 42.01. To Mr. Whittington for $ 18.75. approved.

Mrs. Willis-Miller informed the board to send the board meeting minutes to the Journal newspaper.

Meeting adjourned at 9:30

Motion by Mr. Hardy, seconded by Mr. Biller to reopen the meeting, approved.

Motion by Mr. Hardy, seconded by Mr. Biller to look into a new rate increase, approved.

Meeting adjourned at 9:46.

Raymond Biller-Chairman

Robert Hardy- Treasurer

James A. Addy-Secretary

Certificate of Publication

JEFFERSON PUBLISHING COMPANY, INC., Publisher

SPIRIT OF JEFFERSON ADVOCATE

Charles Town, W. Va. July 9, 2009 20 ____

I hereby certify that the annexed Notice of Special Meeting

in the case of Harpers Ferry Bolivar PSD

has been published once a week for one successive weeks, in the Spirit of Jefferson Advocate, a newspaper published in Charles Town, Jefferson County, West Virginia, in the issues of

July 9, 2009, 20 ____,

as required by law.

Editor/Manager, Spirit of Jefferson Advocate

State of West Virginia
County of Jefferson
Personally appeared before me, Edward W. Dockeney, Jr., Editor/Manager f the Spirit of Jefferson Advocate, and made oath that the above certificate is true and correct.

Commission expires

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
CARA D. YOUNG
JEFFERSON PUBLISHING CO., INC.
P.O. BOX 966
CHARLES TOWN, WV 25414
My Commission Expires January 27, 2019

Notary Public

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL MEETING

The Public Service Board of Harpers Ferry-Bolivar Public Service District (the "District") will hold a special meeting on Monday, July 13, 2009, at 8:30 a.m., prevailing time, at the District's sewerage treatment plant located at 192 Lake Quigley Drive, Harpers Ferry, West Virginia, for the following purposes, and the agenda will include the following:

1. To consider a proposed Bond Resolution authorizing up to two series of Sewer Revenue Bonds, Series 2009, in an aggregate principal amount not to exceed $1,200,000 (the "Series 2009 Bonds"), to pay the costs of design, acquisition and installation of a sludge belt filter press system and related acquisitions and improvements for the existing sewage treatment plant of the District (the "Series 2009 Project"), to refinance an existing bank loan, and to pay the costs of issuance and related costs.

2. To consider proposed supplemental resolutions approving the terms and other provisions of the Series 2009 Bonds and authorizing the first draw on the proceeds of the Series 2009 Bonds.

3. To consider and approve all other documents and matters in connection with the financing, acquisition and construction of the Series 2009 Project.

This meeting is open to the press and the public and any person interested may attend such meeting.

7/9/1t

Classified/Legal Advertising Invoice

The Journal

207 W King St

Martinsburg, WV
25401
(304) 263-8931

JACKSON KELLY
PO BOX 553
1600 LAIDLEY TOWER
CHARLESTON, WV

25322

07/01/2009 4:09:10PM

No: 417656

Phone: 304 340-1287

Ad No	Customer No:	Start Date	Stop Date	Category:	Classification:
417656	**L16800**	**07-03-2009**	**07-10-2009**	**Legal Notices**	**Legals/Public Notice**

Order No	Rate:	Lines:	Words:	Inches:		Cost	Payments	Balance
	LE	**69**	**218**	**7.19**		**75.38**	**.00**	**75.38**

Publications ... Runs	Solicitor:	Origin:	Sales Rep:	Credit Card	Credit Card Number	Card Expire
Journal ... 2	**SS**	**2**	**31**			

07-03-09

07-10-09

Identifier

HARPERS FERRY-BOLIVAR
PUBLIC SERVICE
DISTRICT
NOTICE OF SPECIAL
MEETING

The Public Service Board of

*=Extend Expiration Date

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
NOTICE OF SPECIAL MEETING

The Public Service Board of Harpers Ferry-Bolivar Public Service District (the "District") will hold a special meeting on Monday, July 13, 2009 at 6:30 p.m., prevailing time, at the District's sewerage treatment plant located at 192 Lake Quigley Drive, Harpers Ferry, West Virginia, for the following purposes, and the agenda will include the following:

To consider a proposed Bond Resolution authorizing up to two series of Sewer Revenue Bonds, Series 2009 (in an aggregate principal amount not to exceed $1,200,000 [illegible] Series 2009 Bonds), to pay the costs of design, acquisition and installation of a biodisk [illegible] and related [illegible] and to pay the costs of issuance and [illegible] costs.

To consider proposed supplemental resolution approving the terms and other provisions of the Series 2009 Bonds and authorizing the first draw on the proceeds of the Series 2009 Bonds.

To consider and approve all other documents and matters in connection with the financing, acquisition and construction of the Series 2009 Project.

This meeting is open to the press and the public and any person interested may attend such meeting.

7-3-10 - 2t

Certificate of Publication

This is to certify the annexed advertisement

Jackson Kelly

Special Meeting Notice

appeared for 2 consecutive days/weeks in The Journal Publishing Company, a newspaper published in the City of Martinsburg, WV in its issue beginning:

7-03-09

and ending

7-10-09

The Journal
207 W. King Street
Martinsburg, WV 25401

Fee$ 75.38

THE STATE OF WEST VIRGINIA
COUNTY OF BERKELEY

The foregoing instrument was acknowledged before me this July 13, 09 by

[signature]

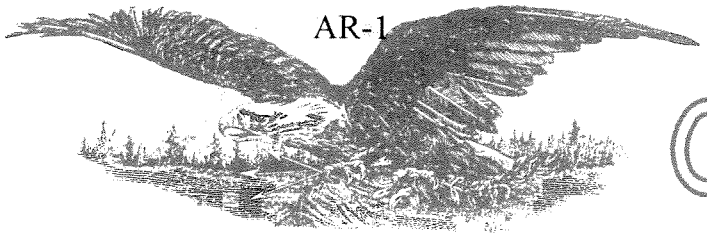
My commission expires Apr. 29, 2018.

Carol Bush

Notary Public

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Carol Bush
23 Armstrong Way
Martinsburg, WV 25403
My Commission Expires April 29, 2018

AR-1



COPY

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $629,612

KNOW ALL MEN BY THESE PRESENTS: The 21st day of July 2009, that HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Jefferson 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 TWENTY-NINE THOUSAND SIX HUNDRED TWELVE DOLLARS ($629,612), 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 March 1, 2011, to and including December 1, 2030, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of 1.0% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, as set forth on said EXHIBIT B.

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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated July 21, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewerage system of the Issuer (the "Physical Project"); (ii) to refinance an outstanding bank loan of the Issuer which was obtained in 2005 to provide part of then replacements and upgrades to the existing public sewerage system of the Issuer (the "Refinancing Project") (the Physical Project and the Refinancing Project collectively, the "Project"); (iii) to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iv) to pay certain costs of issuance of the Bonds and related costs. The existing public sewerage system of the Issuer, the Physical 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 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1978, DATED APRIL 22, 1980, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $485,000 (THE "PRIOR BONDS"); AND (2) SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA), DATED JULY 21, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $629,612 (THE "SERIES 2009 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 B Bonds and the Prior Bonds 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 prior to or on a parity with the Bonds, including the Series 2009 B Bonds and the Prior Bonds. 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 United Bank, Inc., 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 money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such 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.

[Remainder of Page Intentionally Blank]

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

[SEAL, IF ANY]

COPY

Chairman

ATTEST:

COPY

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: July 21, 2009.

UNITED BANK, INC.,
as Registrar

COPY

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
$ 226,400	7/21/09	$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
TOTAL		$_____	

EXHIBIT B
DEBT SERVICE SCHEDULE

0% Interest Rate
1% Admin Fee

Period Ending	Principal	Interest	Debt Service
07/21/2009			
03/01/2011	7,871		7,871
06/01/2011	7,871		7,871
09/01/2011	7,871		7,871
12/01/2011	7,871		7,871
03/01/2012	7,871		7,871
06/01/2012	7,871		7,871
09/01/2012	7,871		7,871
12/01/2012	7,871		7,871
03/01/2013	7,871		7,871
06/01/2013	7,871		7,871
09/01/2013	7,871		7,871
12/01/2013	7,870		7,870
03/01/2014	7,870		7,870
06/01/2014	7,870		7,870
09/01/2014	7,870		7,870
12/01/2014	7,870		7,870
03/01/2015	7,870		7,870
06/01/2015	7,870		7,870
09/01/2015	7,870		7,870
12/01/2015	7,870		7,870
03/01/2016	7,870		7,870
06/01/2016	7,870		7,870
09/01/2016	7,870		7,870
12/01/2016	7,870		7,870
03/01/2017	7,870		7,870
06/01/2017	7,870		7,870
09/01/2017	7,870		7,870
12/01/2017	7,870		7,870
03/01/2018	7,870		7,870
06/01/2018	7,870		7,870
09/01/2018	7,870		7,870
12/01/2018	7,870		7,870
03/01/2019	7,870		7,870
06/01/2019	7,870		7,870
09/01/2019	7,870		7,870
12/01/2019	7,870		7,870
03/01/2020	7,870		7,870
06/01/2020	7,870		7,870
09/01/2020	7,870		7,870
12/01/2020	7,870		7,870
03/01/2021	7,870		7,870
06/01/2021	7,870		7,870
09/01/2021	7,870		7,870
12/01/2021	7,870		7,870
03/01/2022	7,870		7,870
06/01/2022	7,870		7,870
09/01/2022	7,870		7,870
12/01/2022	7,870		7,870
03/01/2023	7,870		7,870
06/01/2023	7,870		7,870
09/01/2023	7,870		7,870
12/01/2023	7,870		7,870
03/01/2024	7,870		7,870

06/01/2024	7,870	7,870
09/01/2024	7,870	7,870
12/01/2024	7,870	7,870
03/01/2025	7,870	7,870
06/01/2025	7,870	7,870
09/01/2025	7,870	7,870
12/01/2025	7,870	7,870
03/01/2026	7,870	7,870
06/01/2026	7,870	7,870
09/01/2026	7,870	7,870
12/01/2026	7,870	7,870
03/01/2027	7,870	7,870
06/01/2027	7,870	7,870
09/01/2027	7,870	7,870
12/01/2027	7,870	7,870
03/01/2028	7,870	7,870
06/01/2028	7,870	7,870
09/01/2028	7,870	7,870
12/01/2028	7,870	7,870
03/01/2029	7,870	7,870
06/01/2029	7,870	7,870
09/01/2029	7,870	7,870
12/01/2029	7,870	7,870
03/01/2030	7,870	7,870
06/01/2030	7,870	7,870
09/01/2030	7,870	7,870
12/01/2030	7,871	7,871
	629,612	**629,612**

* Plus a Quarterly administrative fee of $796.85 for
Total Administrative fee paid $63,748

AR-1

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

NUMBER

BR-1

COPY

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

No. BR-1 $629,612

KNOW ALL MEN BY THESE PRESENTS: The 21st of July, 2009, that HARPERS FERRY - BOLIVAR PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Jefferson 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 TWENTY-NINE THOUSAND SIX HUNDRED TWELVE ($629,612), 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 forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, to and including December 1, 2020, 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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated July 21, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewerage system of the Issuer (the "Physical Project" and, together with the Refinancing Project described in the Bond Legislation (defined below), the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Physical 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 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1978, DATED APRIL 22, 1980, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $485,000 (THE "PRIOR BONDS"); AND (2) SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), DATED JULY 21, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $629,612 (THE "SERIES 2009 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 A Bonds and the Prior Bonds, from any monies in the reserve account authorized to be created under the Bond Legislation for the Bonds (the "Series 2009 B 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 B 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 prior to or on a parity with the Bonds, including the Series 2009 A Bonds and the Prior Bonds. 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 United Bank, Inc., 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 money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Physical 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.

[Remainder of Page Intentionally Blank]

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

[SEAL, IF ANY]

Chairman

ATTEST:

Secretary

COPY

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: July 21, 2009.

UNITED BANK, INC.,
as Registrar

COPY

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
$ 74,200	7/21/09	$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
$		$	
TOTAL		$	

EXHIBIT B
DEBT SERVICE SCHEDULE

Period Ending	Debt Service	Principal Forgiveness
07/21/2009		
03/01/2011	-15,741	15,741
06/01/2011	-15,741	15,741
09/01/2011	-15,741	15,741
12/01/2011	-15,741	15,741
03/01/2012	-15,741	15,741
06/01/2012	-15,741	15,741
09/01/2012	-15,741	15,741
12/01/2012	-15,741	15,741
03/01/2013	-15,741	15,741
06/01/2013	-15,741	15,741
09/01/2013	-15,741	15,741
12/01/2013	-15,740	15,740
03/01/2014	-15,740	15,740
06/01/2014	-15,740	15,740
09/01/2014	-15,740	15,740
12/01/2014	-15,740	15,740
03/01/2015	-15,740	15,740
06/01/2015	-15,740	15,740
09/01/2015	-15,740	15,740
12/01/2015	-15,740	15,740
03/01/2016	-15,740	15,740
06/01/2016	-15,740	15,740
09/01/2016	-15,740	15,740
12/01/2016	-15,740	15,740
03/01/2017	-15,740	15,740
06/01/2017	-15,740	15,740
09/01/2017	-15,740	15,740
12/01/2017	-15,740	15,740
03/01/2018	-15,740	15,740
06/01/2018	-15,740	15,740
09/01/2018	-15,740	15,740
12/01/2018	-15,740	15,740
03/01/2019	-15,740	15,740
06/01/2019	-15,740	15,740
09/01/2019	-15,740	15,740
12/01/2019	-15,740	15,740
03/01/2020	-15,740	15,740
06/01/2020	-15,740	15,740
09/01/2020	-15,740	15,740
12/01/2020	-15,741	15,741
	-629,612	**629,612**

BR-1

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

WEST VIRGINIA MUNICIPAL BOND COMMISSION
Suite 401
1207 Quarrier Street, Charleston, WV 25301
(304) 558-3971 FAX: 558-1280

NEW ISSUE REPORT FORM
Date of Report: 07/15/2009

ISSUE: Harpers Ferry-Bolivar Public Service District
Sewer Revenue Bonds, Series 2009 A
ADDRESS: P.O. Box 235, Harpers Ferry, West Virginia 25425 COUNTY: Jefferson

PURPOSE OF ISSUE: New Money x
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: July 21, 2009 CLOSING DATE: 21-Jul-09
ISSUE AMOUNT: $629,612 RATE: 0% 1% admin fee

1st DEBT SERVICE DUE: December 1, 2010 1st PRINCIPAL DUE: _____
1st DEBT SERVICE AMOUNT: $2,623.67 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC
Contact Person: Taunja Willis-Miller
Phone: 304-284-4109

UNDERWRITERS COUNSEL: N/A
Contact Person: _____
Phone: _____

CLOSING BANK: Bank of Charles Town
Contact Person: Steven B. Shaffer
Phone: 304-535-6336

ESCROW TRUSTEE: N/A
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Jimmy Williams
Position: Plant Operator
Phone: 304-535-2390
Email: harpersferrypsd@frontiernet.net

OTHER: WV Dept. of Environmental Protection
Contact Person: Rosalie Brodersen
Position: Program Manager
Phone: (304) 926-0449 ext. 1608

DEPOSITS TO MBC AT CLOSE: $31,500
By x Wire
_____ Check
_____ In-house Transfer

_____ Accrued Interest: $ _____
_____ Capitalized Interest: $ _____
x Reserve Account: $ $ 31,500.00
_____ Other: _____ $ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE: N/A
By _____ Wire
_____ Check
_____ IGT

_____ To Escrow Trustee: $ _____
_____ To Issuer: $ _____
_____ To Cons.Invest Fund $ _____
_____ To Other: _____ $ _____

NOTES: Reserve Account funded

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

WEST VIRGINIA MUNICIPAL BOND COMMISISON
Suite 401
1207 Quarrier Street, Charleston, WV 25301
(304) 558-3971 FAX: 558-1280

NEW ISSUE REPORT FORM
Date of Report: 07/15/2009

ISSUE: Harpers Ferry-Bolivar Public Service District
Sewer Revenue Bonds, Series 20(09B
RESS: P.O. Box 235, Harpers Ferry, West Virginia 25425 COUNTY: Jefferson

PURPOSE OF ISSUE: New Money x
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: July 21, 2009 CLOSING DATE: 21-Jul-09

ISSUE AMOUNT: $629,612 RATE: 0%

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: _____

1st DEBT SERVICE AMOUNT: N/A PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC
Contact Person: Taunja Willis-Miller
Phone: 304-284-4109

UNDERWRITERS COUNSEL: N/A
Contact Person: _____
Phone: _____

CLOSING BANK: Bank of Charles Town
Contact Person: Steven B. Shaffer
Phone: 304-535-6336

ESCROW TRUSTEE: N/A
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Jimmy Williams
Position: Plant Operator
Phone: 304-535-2390
Email: harpersferrypsd@frontiernet.net

OTHER: WV Dept of Environmental Protection
Contact Person: Rosalie Brodersen
Position: Program Manager
Phone: (304) 926-0499, ext. 1608

DEPOSITS TO MBC AT CLOSE: N/A
By _____ Wire
_____ Check
_____ In-house Transfer

_____ Accrued Interest: $
_____ Capitalized Interest: $
_____ Reserve Account: $
_____ Other: $

REFUNDS & TRANSFERS BY MBC AT CLOSE: N/A
By _____ Wire
_____ Check
_____ IGT

_____ To Escrow Trustee: $
_____ To Issuer: $
_____ To Cons.Invest Fund $
_____ To Other: $

NOTES: Stimulus funding; no debt service; principal forgiveness

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

BOND REGISTER 2.10

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

Bond Number	Principal Amount	Date of Bond
No. AR-1	$626,612	July 21, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

Authorized Representative

_____

_____

_____

BOND REGISTER 2.10

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

Bond Number	Principal Amount	Date of Bond
No. BR-1	$626,612	July 21, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

Authorized Representative

_____

_____

_____

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

GENERAL CERTIFICATE OF ISSUER 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. PUBLICATION OF NOTICE OF PSC FILING
16. SPECIMEN BONDS
17. CONFLICT OF INTEREST
18. CLEAN WATER ACT
19. PROCUREMENT OF ENGINEERING SERVICES
20. EXECUTION OF COUNTERPARTS

We, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board of Harpers Ferry-Bolivar Public Service District in Jefferson County, West Virginia (the "Issuer"), hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), each dated the date hereof (collectively, the "Series 2009 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 July 13, 2009 (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 performance of the Project including the acquisition or installation of the Physical Project, the operation of the System, the receipt of the Net Revenues, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the performance of the Project including the acquisition and installation of the Physical Project, the operation of the System, the pledge or application of moneys 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 Project, including, without limitation, the acquisition and installation of the Physical 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 installation of the Physical Project have been solicited in accordance with Chapter 5, Article 22, 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 outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge and source of and security for payment from the New Revenues, being the Issuer's Sewer Revenue Bonds, Series 1978, dated April 22, 1980, issued in the original aggregate principal amount of $485,000 (the "Prior Bonds").

The Issuer has obtained (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is using a portion of the proceeds of the Series 2009 A Bonds to pay in full its outstanding 2005 Bank Note. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Resolutions.

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

ARRA Assistance Agreement (herein referred to as the "Loan Agreement")

Public Service Commission Orders

Infrastructure and Jobs Development Council Approval

Department of Environmental Protection Funding Letter

County Commission Orders Creating the District

County Commission Orders Appointing Current Boardmembers

Oaths of Office of Current Boardmembers

Rules of Procedure

Minutes of Current Year Organizational Meeting

Minutes on Adoption of Bond Resolution and First Draw Resolution

NPDES Permit

Department of Environmental Protection Approval of Plans and Specifications

Prior Resolutions

Evidence of Insurance

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

Name	Date of Commencement of Office	Date of Termination of Office
Raymond Biller	July 1, 2008	June 30, 2014
James A. Addy	July 1, 2004	June 30, 2010
Robert J. Hardy	July 1, 2006	June 30, 2012

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

Chairperson	-	Raymond Biller
Secretary	-	James A. Addy
Treasurer	-	Robert J. Hardy

The Public Service District does not have regular counsel. Jackson Kelly PLLC has served as special Public Service Commission counsel, as special counsel in connection with an Exchange Agreement (defined below) with the National Park Service and as bond counsel in connection with the issuance of the Series 2009 Bonds.

7. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and installation of the Physical 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. The District has entered into an Agreement to Exchange Interests in Real Property between the Issuer and the National Park Service (the "Exchange Agreement"), pursuant to which the District will receive an easement to install the Project and operate the sewage treatment plant on property owned by the National Park Service. The process for such exchange is underway, and the District has no reason to believe that the property exchange will not be completed. Pending the property exchange and prior to June 1, 2010, the District has received a Special Use Permit SUP NCR HAFE 5390-300 issued by the National Park Service, supported by a letter dated July 1, 2009 (L3031), from the Superintendent of Harpers Ferry National Historic Park, allowing the District to operate the sewage treatment plant and begin site preparation for the Physical Project. Upon consummation of the property exchange contemplated by the Exchange Agreement, the Issuer will acquire legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of acquisition and installation, operation and maintenance of the Project for the estimated life of the Project. .

8. MEETINGS, ETC.: All actions, ordinances, 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 any 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 have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. 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 dates 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.

The Series 2009 A Bonds and Series 2009 B Bonds shall bear no interest. Principal payments on the Series 2009 A Bonds shall begin on March 1, 2011, and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached to the Loan Agreement and incorporated herein by reference. The Authority at the direction of the DEP shall forgive the principal amount of the Series 2009 B Bonds. Principal forgiveness shall begin on March 1, 2011, and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached to the Loan Agreement and incorporated herein by reference.

The Series 2009 A Bonds and Series 2009 B Bonds are fully registered in the name of the Authority.

The Issuer shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of the Loan Agreement for at least the term of the Series 2009 A Bonds and Series 2009 B Bonds.

The Issuer shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

11. RATES: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered April 17, 2009 which became final order on May 7, 2009, in Case No. 08-2118-PSD-CN (the "Final Order"), approving the rates and charges for the services of the System. The Issuer has adopted a resolution prescribing such rates and charges.

12. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Final Order, among other things and in addition to approving the rates and charges for the services of the System as above referenced, granting to the Issuer a certificate of public convenience and necessity for the Physical Project and approving the financing for the Physical Project. The time for appeal of the Final Order has expired prior to the date hereof without any appeal. Such order is not subject to any further appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to such Final Order.

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 for each series, numbered AR-l and BR-I, respectively, each dated the date hereof, by his manual signature, and the undersigned Secretary did officially attest by his manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. If a seal is impressed above the signatures appearing on this certificate, it constitutes the official seal of the District and was duly affixed to the Bonds. If no seal is impressed above the signatures appearing on this certificate, the District does not have an official seal.

14. BOND PROCEEDS: On the date hereof, the Issuer received $300,600 from the Authority and the DEP, being a portion, more than 5%, of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and installation of the Physical Project progresses.

15. PUBLICATION OF NOTICE OF PSC FILING: The Issuer has published any required notice with respect to, among other things, the acquisition and installation of the Project, anticipated user rates and charges, and the filing of a formal application for a certificate of public convenience and necessity with the Public Service Commission of West Virginia, in accordance with Chapter 16, Article 13A, Section 25 of the Official West Virginia Code of 1931, as amended.

16. SPECIMEN BONDS: Delivered concurrently herewith are true and accurate specimens of the Bonds.

17. CONFLICT OF INTEREST: No 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.

18. CLEAN WATER ACT: The Project as described in the Bond Legislation complies with Sections 208 and 303(e) of the Clean Water Act.

19. 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.

20. 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 left blank.]

WITNESS our signatures and the official seal, if any, of HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT on the day and year first written above.

[CORPORATE SEAL, IF ANY]

SIGNATURE	OFFICIAL TITLE
Raymond E. Biller	Chairman
James A. Addy	Secretary

{M0597107.3}

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Chairman of the Public Service Board of Harpers Ferry-Bolivar Public Service District in Jefferson County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of $629,612 Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), and $626,612 Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), of the Issuer, all dated July 21, 2009 (collectively, the "Series 2009 Bonds"), hereby certifies this 21st day of July, 2009 as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Series 2009 Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer. 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 July 13, 2009 (the "Bond Resolution"), authorizing the Series 2009 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 July 21, 2009, the date on which the Series 2009 Bonds are being physically delivered in exchange for an initial advance of $300,600 being a portion (more than 5%) of the principal amount of the Series 2009 Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Resolution pursuant to which the Series 2009 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 Series 2009 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"), the West Virginia Department of Environmental Protection (the "DEP") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, from which, if any, the proceeds of the Series 2009 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 Bonds were sold on July 21, 2009, to the Authority, pursuant to an ARRA Assistance Agreement dated July 21, 2009, by and among the Issuer, the Authority and the DEP, for an aggregate purchase price of $1,259,224 (100% of par), at which time, the Issuer received $300,600 from the Authority and the DEP, being the first advance of the principal amount of the Series 2009 Bonds. No accrued interest has been or will be paid on the Series 2009 Bonds, which do not bear interest. The balance of the principal amount of the Series 2009 A Bonds will be advanced to the Issuer as acquisition and installation of the Physical 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 installation of improvements to the existing public sewerage system of the Issuer (the "Physical Project"); (ii) refinancing an outstanding loan of the Issuer with the Bank of Charles Town (the "Refinancing Project"); (iii) funding a reserve account for the Series 2009 A Bonds; and (iv) paying certain costs of issuance and related costs (the Physical Project and the Refinancing Project collectively, the "Project").

7. The Series 2009 B 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 the Physical Project; and (ii) paying certain costs of issuance and related costs.

8. Within 30 days after the delivery of the Series 2009 Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Series 2009 Bonds on the Physical Project, constituting a substantial binding commitment. The acquisition and installation of the Physical Project, the payment of the Refinancing Project, and the allocation of the net sale proceeds of the Series 2009 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, all of the proceeds from the sale of the Series 2009 Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before July 21, 2011. The acquisition and installation of the Physical Project is expected to be completed by April 30, 2010.

9. The total cost of the Project is estimated at $1,259,224. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2009 A Bonds	$629,612
Proceeds of the Series 2009 B Bonds	629,612
Total Sources	$1,259,224

USES

Costs of Acquisition and Installation of the Physical Project	$1,066,737
Costs of Refinancing Project	68,987
Series 2009 A Reserve Account	31,500
Costs of Issuance	92,000
Total Uses	$1,259,224

10. Pursuant to Article V of the Bond Resolution, the following special finds or accounts have been created, authorized to be created or continued relative to the Series 2009 Bonds:

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

(2) Renewal and Replacement Fund (established by Prior Resolution);

(3) Series 2009 A Bonds Project Fund;

(4) Series 2009 B Bonds Project Fund;

(5) Series 2009 A Bonds Sinking Fund;

(6) Series 2009 A Bonds Reserve Account;

(7) Series 2009 B Bonds Sinking Fund; and

(8) Series 2009 B Bonds Reserve Account.

The District does not expect to fund either the Series 2009 B Bonds Sinking Fund or the Series 2009 B Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Resolution, the proceeds of the Series 2009 Bonds will be deposited as follows:

(1) Series 2009 A Bonds proceeds in the amount of $31,500 will be deposited in the Series 2009 A Bonds Reserve Account.

(2) Series 2009 A Bonds proceeds in the amount of $68,987 will be used to pay the 2005 Bank Note.

(3) The balance of the proceeds of the Series 2009 A Bonds will be deposited in the Series 2009 A Bonds Project Fund as received from time to time and applied solely to

payment of costs of the Project, including costs of issuance of the Series 2009 A Bonds and related costs.

(4) The proceeds of the Series 2009 B Bonds will be deposited in the Series 2009 B Bonds Project Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 2009 B Bonds and related costs.

12. Monies held in the Series 2009 A Bonds Sinking Fund will be used solely to pay principal of the Series 2009 A Bonds and will not be available to meet costs of acquisition and installation of the Project. 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, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

13. There are not expected to be funds deposited to either the Series 2009 B Bonds Sinking Fund or the Series 2009 B Bonds Reserve Account.

14. Work with respect to the acquisition and installation of the Physical Project will proceed with due diligence to completion. The acquisition and installation of the Project is expected to be completed within 10 months of the date hereof.

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

16. With the exception of the amount deposited in the Series 2009 A Bonds Reserve Account all of the proceeds of the Series 2009 A Bonds will be expended on the Project within 24 months from the date of issuance thereof.

17. All of the proceeds of the Series 2009 B Bonds will be expended on the Project within 24 months from the date of issuance thereof

18. 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 Series 2009 Bonds.

19. The amount designated as costs of issuance of the Series 2009 Bonds consists only of costs which are directly related to and necessary for the issuance of the Series 2009 Bonds.

20. All property, if any, financed with the proceeds of the Series 2009 Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

21. No proceeds of the Series 2009 Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

22. The original proceeds of the Series 2009 Bonds will not exceed the amount necessary for the purposes of the issue.

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

24. The Series 2009 Bonds are not federally guaranteed.

25. The Issuer has retained the right to amend the Bond Resolution authorizing the issuance of the Series 2009 Bonds if such amendment is necessary to assure that the Series 2009 Bonds remain public purpose bonds.

26. The Issuer has funded the Series 2009 A Bonds Reserve Account at the maximum amount of principal which will mature and become due on the Series 2009 A Bonds in the then current or any succeeding year with the proceeds of the Series 2009 Bonds. 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 the Series 2009 A Bonds and will not be available to pay costs of the Project. The Issuer does not expect to deposit Bond proceeds, Gross Revenues or any other funds into either the Series 2009 B Bonds Reserve Account or the Series 2009 B Bonds Sinking Fund.

27. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Series 2009 Bonds, (b) are to be sold pursuant to a common plan of financing together with the Series 2009 Bonds and (c) will be paid out of substantially the same sources of funds of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Series 2009 Bonds.

28. 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.

29. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Series 2009 Bonds, rebates and rebate calculations.

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

[Remainder of page intentionally left blank.]

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

HARPERS FERRY-BOLIVAR PUBLIC
SERVICE DISTRICT

By: Raymond E. Biles
Its: Chairman

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

CERTIFICATE OF CONSULTING ENGINEER

On this 21st day of July, 2009, I, Richard W. Klein, Registered Professional Engineer, West Virginia License No. 7624, of Alpha Associates, Incorporated, Martinsburg, West Virginia, hereby certify as follows:

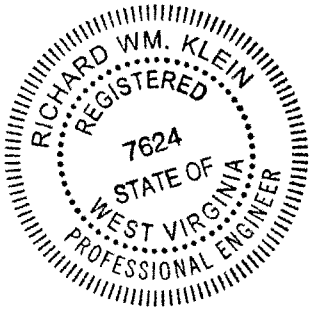
1. My firm is engineer for the acquisition and installation of certain improvements (the "Project") to the existing public sewer facilities (the "System") of Harpers Ferry-Bolivar Public Service District (the "Issuer"), to be installed primarily in Jefferson County, West Virginia, which acquisition and installation are being permanently financed in part by the above-captioned bonds (the "Series 2009 A Bonds" and the "Series 2009 B Bonds," respectively, and, together, the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meanings set forth in the Bond Resolution, duly adopted by the Issuer on July 13, 2009 (the "Resolution"), and the ARRA Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated July 21, 2009 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying all or a portion of the costs of acquisition and installation of the Project; (ii) refinancing an outstanding bank loan (Series 2009 A Bonds only); (iii) funding a reserve account for the Series 2009 A Bonds (Series 2009 A Bonds only); and (iv) paying certain costs of issuance and related costs.

3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be installed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and will have a useful life of at least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and installation of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit A, and my firm has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and installation of the Project and operation of the System; (ix) the Issuer has received the Buy American Certificate from each contractor; (x) in reliance upon the certificate of the Issuer's certified public accountant, John C. Kunkle, dated the date hereof, 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; (xi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and installation of the Project approved by the DEP; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal as of the date first written above.

[SEAL]



ALPHA ASSOCIATES, INCORPORATED

Richard W. Klein, P.E.
West Virginia License No. 7624

Schedule A
Harper's Ferry Bolivar PSD
50% forgiveness

7/8/2009

		TOTAL	SRF ARRA	SRF, 0%, 1% adm, 20 yr	TOTAL
	A. COST OF PROJECT:				
	1 CONSTRUCTION				
	Contract #1	810,000	480,167	329,833	810,000
	2 TECHNICAL SERVICES				0
	Basic	50,909	35,697	15,212	50,909
^	Special/Other Svcs	85,183		85,183	85,183
	Resident Inspection	41,548	41,548		41,548
	Planning	30,495		30,495	30,495
^	Design	4,102		4,102	
^	Design (int fees)	4,000		4,000	4,000
	3 LEGAL & FISCAL				
^	Legal	65,500	45,700	19,800	65,500
	4 ADMINISTRATIVE				
^	Bank Loan (bar screen)	68,987		68,987	68,987
	5 Sites & Other Lands				
	Acquisition	0	0	0	0
#	6 CONTINGENCY	40,500	0	40,500	40,500
	7 TOTAL	1,201,224	603,112	598,112	1,201,224
	B. COST OF FINANCING				
#	8 Funded Reserve	31,500		31,500	31,500
	9 Registrar fees	500	500		500
	10 Bond Counsel	26,000	26,000		26,000
	11 Cost of Financing	58,000 #	26,500	31,500	58,000
	12 TOTAL Cost of Project	1,259,224	629,612	629,612	1,259,224
			629,612	629,612	
	C SOURCES OF FUNDS				
	13 State Grants				0
	14 Other sources				0
	15 net proceeds from Bond Issuance		629,612	629,612	1,259,224

^ prior 10-1-costs
** reduce to 5% after bids

2nd rd funds

Ryan N. Kelly, PE #17061
Alpha Associates, Inc.
ON BEHALF OF
RICHARD W. KLEIN

7/20/09
Date

Robert L. Hand
Harpers Ferry-Bolivar PSD

7/20/09
Date

J.C. Kunkle & Associates, A.C.
CERTIFIED PUBLIC ACCOUNTING & CONSULTING

July 21, 2009

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

Harpers Ferry-Bolivar Public Service District
Harpers Ferry, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure & Jobs Development Council
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Based upon the sewer rates and charges set forth in the Decision entered May 7, 2009 of the Public Service Commission of West Virginia in Case No. 08-2118-PSD-CN (the "PSC Order"), the debt service schedule attached to the ARRA Assistance Agreement dated July 21, 2009 (the "Agreement") and projected operation and maintenance expenses and anticipated customer usage as furnished to me by Harpers Ferry-Bolivar Public Service District (the "Issuer"), it is my opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system (the "System") of the Issuer, will:

(1) Enable the Issuer to fulfill its obligations under Section 4.1(a) of the Agreement; and

(2) (i) Pay all reasonable expenses of operation, repair and maintenance of the System and (ii) leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any Fiscal Year for payment of principal of and interest on the (a) Sewer Revenue Bonds, Series 1978, issued in the original principal amount of $485,000 (the "Prior Bonds"), (b) Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), issued in the principal amount of $629,612, and (c) Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), issued in the principal amount of $629,612 ((b) and (c) are referred to together as the "Series 2009 Bonds"; the Prior Bonds and the Series 2009 Bonds are referred to together as the "Bonds") and all other obligations secured by or payable from such revenues.

164 Lina Lane ▪ Martinsburg, WV 25405
304/263-9299 ▪ Fax 304/267-7032 ▪ e-mail: jckunkle@jckunkleassociates.com
MEMBER: AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

It is further my opinion 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 hereof, plus the estimated average increased annual Net Revenues expected to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by the Series 2009 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, the Bonds. For purposes of this paragraph, the "estimated average increased annual Net Revenues expected to be received in each of the three (3) succeeding years" shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by the Series 2009 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 the Series 2009 Bonds (the PSC Order), which amount is estimated to be $62,000. The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to have been adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in my opinion, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the time for appeal of have expired.

Also for purposes of this Certificate:

(1) "Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined;

(2) "Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, 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 or any tap fees; and

(3) "Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System; 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.

Very truly yours,

J.C. KUNKLE & ASSOCIATES, A.C.

Martinsburg, West Virginia

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On this 21st day of July, 2009, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Chairman of Harpers Ferry-Bolivar Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the date hereof, the Authority received the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, in the principal amount of $629,612 numbered AR-1 (the "Series 2009 A Bonds"), and the Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), of the Issuer, in the principal amount of $629,612, numbered BR-1 (the "Series 2009 B Bonds"), each issued as a single, fully registered Bond, and dated July 21, 2009.

2. At the time of such receipt, the Series 2009 A Bond and the Series 2009 B Bond had been executed by the Chairman and the Secretary of the Issuer by their respective manual signatures.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2009 Bonds, of $300,600, being a portion of the principal amount of the Series 2009 Bonds, each as reflected in the Record of Advances attached to the Series 2009 Bonds. The balance of the principal amount of the Series 2009 Bonds will be advanced by the Authority and the West Virginia Department of Environmental Protection to the Issuer as acquisition and installation of the Project progresses.

Dated as of the day and year first written above.

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: Carol A. Cummings
Its: Authorized Representative

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

By: Raymond E. Biller
Its: Chairman

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

United Bank, Inc.,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

On this 21st day of July, 2009, there are delivered to you herewith:

(1) Bond No. AR-l, constituting the entire original issue of Harpers Ferry-Bolivar Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the principal amount of $629,612 (the "Series 2009 A Bonds"), and Bond No. BR-l, constituting the entire original issue of Harpers Ferry-Bolivar Public Service District Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), in the principal amount of $629,612 (the "Series 2009 B Bonds"), each dated July 21, 2009 (collectively, the "Series 2009 Bonds"), executed by the Chairman and Secretary of Harpers Ferry-Bolivar Public Service District (the "Issuer"), respectively authorized to be issued under and pursuant to a Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-captioned Series 2009 Bonds, duly certified by the Secretary of the Issuer;

(3) Executed counterparts of an ARRA assistance agreement for the Series 2009 A Bonds and 2009 B Bonds, dated July 21, 2009, by and among the Issuer, the West Virginia Water Development Authority (the Authority') and the West Virginia Department of Environmental Protection (the "DEP") (the "Loan Agreement"); and

(4) Executed opinion or opinions of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Series 2009 Bonds.

You are hereby requested and authorized to deliver the Series 2009 Bonds to the Authority upon payment to the Issuer of the sum of $300,600, as further set forth in the Record of Advances attached to the Series 2009 A Bond and the Series 2009 B Bond, respectively, representing a portion, more than 5%, of the principal amount of the Series 2009 Bonds. Prior to such delivery of the Series 2009 Bonds, you will please cause the Series 2009 Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the forms of Certificate of Authentication and Registration thereon.

[Remainder of page intentionally left blank.]

Dated as of the day and year first written above.

HARPERS FERRY-BOLIVAR
PUBLIC SERVICE DISTRICT

By: Raymond E. Butler
Its: Chairman

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

REGISTRAR'S AGREEMENT

THIS REGISTRARS AGREEMENT, dated as of the 21st day of July 2009, by and between HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $629,612 Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), and $629,612 Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), in fully registered form (collectively, the "Series 2009 Bonds"), pursuant to the Bond Resolution of the Issuer duly adopted July 13, 2009 (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 in accordance with any rules and regulations the Issuer advises the Registrar in writing are applicable to the Bonds.

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: Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425
Attention: General Manager

REGISTRAR: United Bank, Inc.
500 Virginia Street, East
Charleston, WV 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.

HARPERS FERRY-BOLIVAR
PUBLIC SERVICE DISTRICT

By: Raymond E. Biller
Its: Chairman

UNITED BANK, INC.

By: [illegible]
Its: Authorized Officer

EXHIBIT A

Bond Legislation included in bond transcript as Document No. 2.3.

SCHEDULE OF COMPENSATION

$500

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 A
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA SRF PROGRAM)

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of Harpers Ferry-Bolivar Public Service District (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, dated July 21, 2009, in the principal amount of $629,612, numbered AR-1 and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program), of the Issuer, dated July 21, 2009, in the principal amount of $629,612, numbered BR-1, were registered as to principal only in the name of "West Virginia Development Authority," in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of United Bank, Inc., as Registrar.

WITNESS my signature in this 21st day of July, 2009.

UNITED BANK, INC.

By: _____
Its: Authorized Officer

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

The BANK OF CHARLES TOWN, Charles Town, West Virginia, hereby accepts appointment as Depository Bank in connection with the Bond Resolution of Harpers Ferry-Bolivar Public Service District (the "Issuer") adopted July 13, 2009 (the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), both dated July 21, 2009, issued in the respective principal amounts of $629,612 and $629,612 (collectively, the Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation, a copy of which has been received.

WITNESS my signature in this 21st day of July, 2009.

BANK OF CHARLES TOWN

By: _____
Its: Authorized Officer

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

ACCEPTANCE OF DUTIES AS REGISTRAR

UNITED BANK, INC., Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Harpers Ferry-Bolivar Public Service District Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), both dated July 21, 2009, issued in the respective principal amounts of $629,612 and $629,612 (collectively, the "Bonds"), and agrees to perform all duties of registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature in this 21st day of July, 2009.

UNITED BANK, INC.

By: _____
Its: Authorized Officer

BANK OF CHARLES TOWN
111 EAST WASHINGTON STREET
CHARLES TOWN WV 25414
(304) 725-8431

HARPERS FERRY BOLIVAR PSD
PO BOX 235
HARPERS FERRY WV 25425-0235

It is our policy to send you a letter of disclosure when quoting a verbal payoff.

Your loan # 4000718 payoff amount is 68,971.34 as of 7/21/2009

The following is a breakdown of the amount due. If you have any questions regarding this payoff, please contact JOSHUA HOUSEHOLDER at (304) 725-8431.

Current balance	68,681.54
Accrued interest	289.80
Interest rebates	0.00
Late charges	0.00
Prepayment penalty	0.00
Other charges/fees	0.00
Insurance rebates	0.00
Credit life accrual	0.00
A&H accrual	0.00
Amortized suspense	0.00
Minimum interest charge	0.00
Total Payoff Amount	68,971.34
Current escrow balance	0.00

Thank you for banking with us. if we may be of further assistance, you can call the number at the top of the letter or contact your lending officer.

CIF20/20 Browser Interface

BANK OF CHARLES TOWN

About | Client Portal | NetForum | Website | Help Desk | Home

7/08/2009 -- 10:07 AM

PRINT FORM | PRINT ISERIES FORM | VIEW MESSAGES

Loan Payoff Inquiry For
HARPERS FERRY BOLIVAR PSD

PREVIOUS < SUBMIT > EXIT

4000718 C0

PAGE FUNCTIONS

> MESSAGES

> AFT

> GEN P/O LETTER

Parameter Help

CUSTOMER INFORMATION

PO BOX 235
HARPERS FERRY WV 25425-0235

MESSAGES
ACTIVE

Effective date 7/21/09
Next payment 8/02/09
Perdiem 15.26256

Learn more >

Description	Amounts	Rebates	Payoffs
Current balance	68,681.54		68,681.54
Accrued interest	289.80		68,971.34
Pre/Payoff penalties			68,971.34
Dealer discount			68,971.34
CR life insurance			68,971.34
A & H insurance			68,971.34
Misc insurance			68,971.34
Late charges			68,971.34
Other charges / fees			68,971.34
Totals			68,971.34

PREVIOUS < SUBMIT > EXIT

CIF 20/20

Start | Inbox - Microsoft Outl... | CIF20/20 Browser Int... | CIF20/20 Browser Int... | 10:07 AM

HARPERS FERRY BOLIVAR PSD PO BOX 235 HARPERS FERRY WV 25425-0235 **BORROWER'S NAME AND ADDRESS** "I" includes each borrower above, joint and severally.	BANK OF CHARLES TOWN 111 E WASHINGTON ST PO BOX 906 CHARLES TOWN, WV 25414 COPY **LENDER'S NAME AND ADDRESS** "You" means the lender, its successors and assigns.	Preparer: MATTHEW PERKS Loan Number 4000718 Date 01/31/05 Maturity Date 02/02/15 Loan Amount $ $105,000.00 Renewal Of

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of One hundred five thousand & no/100 Dollars $ $105,000.00

☒ **Single Advance:** I will receive all of this principal sum on 01/31/05. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of $ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____.

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from JANUARY 31, 2005 at the rate of 8.0000 % per year until FEBRUARY 02, 2015.

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____. A change in the interest rate will take effect _____.

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %. The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____.

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____.

☒ **LATE CHARGE:** If a payment is made more than 10 days after it is due, I agree to pay a late charge of 5.000% OF THE PAYMENT AMOUNT DUE, MINIMUM $50.00.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: $1,050 ORIGINATION FEE / LEGAL REVIEW FEES.

PAYMENTS: I agree to pay this note as follows:

☐ **Interest:** I agree to pay accrued interest _____

☐ **Principal:** I agree to pay the principal _____

☐ **Installments:** I agree to pay this note in 120 payments. The first payment will be in the amount of $ 1,280.52 and will be due MARCH 02, 2005. A payment of $ 1,280.52 will be due ON THE 2nd DAY OF EACH MONTH thereafter. The final payment of the entire unpaid balance of principal and interest will be due FEBRUARY 02, 2015.

☐ THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS:

☐ AN INSTALLMENT OF $_____ WILL BE DUE ON _____

☐ LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: (Amounts and Due Dates) _____

PURPOSE: The purpose of this loan is IMPROVEMENTS TO FACILITY AND PURCHASE OF COMPACTOR.

ADDITIONAL TERMS:

evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☒ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☒ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☒ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The property includes, but is not limited by, the following:

BLANKET LIEN ON ALL ACCOUNTS RECEIVABLE OF THE CORPORATION NOW OWNED OR HEREAFTER ACQUIRED BY THE BORROWER AND COLLATERAL MORE SPECIFICALLY DESCRIBED IN THE SECURITY AGREEMENT

If applicable, enter real estate description and record owner information: _____

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.

☒ If checked, this loan is subject to the West Virginia Consumer Credit and Protection Act.

Borrower/Owner State of organization/registration (if applicable) WEST VIRGINIA

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - "You" means the Secured Party identified on page 1 of this agreement. "I," "me" and "my" means each person who signs this security agreement as Debtor and who agrees to give the property described in this agreement as security for the Secured Debts. All terms and duties under this agreement are joint and individual. No modification of this security agreement is effective unless made in writing and signed by you and me. This security agreement remains in effect, even if the note is paid and I owe no other debt to you, until discharged in writing. Time is of the essence in this agreement.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the property, or to the extent this is a purchase money security interest I will acquire ownership of the property with the proceeds of the loan. I will defend it against any other claim. Your claim to the property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the property for a purpose that will violate any laws or subject the property to forfeiture or seizure.

I will keep books, records and accounts about the property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the property.

I will keep the property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the property and, if I am not, that I have provided you with a list of prior owners of the property.

I will keep the property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the property is to be used in another state, I will give you a list of those states. I will not try to sell the property unless it is inventory or I receive your written permission to do so. If I sell the property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent (1) a beneficial interest in the debtor is sold or transferred or (2) there is a change in either the identity or number of members of a partnership or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the property as they become due. You have the right of reasonable access in order to inspect the property. I will immediately inform you of any loss or damage to the property.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any non-purchase money loan also secured by this agreement will not be deemed to apply to the purchase money loan, and (b) payments on the purchase money loan will be deemed to apply first to the non-purchase money portion of the loan, if any, and then to the purchase money obligations in the order in which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase money loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancings of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

COLLATERAL PROTECTION INSURANCE - Unless I provide you with evidence of the insurance coverage required by my agreement with you, you may purchase insurance at my expense to protect your interests in my collateral. This insurance may, but need not, protect my interests. The coverage that you purchase may not pay any claim that I make or any claim that is made against me in connection with the collateral. I may later cancel any insurance purchased by you, but only after providing you with evidence that I have obtained insurance as required by our agreement. If you purchase insurance for the collateral, I will be responsible for the costs of that insurance, including interest and any other charges you may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to my total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance I may be able to obtain on my own.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the property, to pay or perform, and you may enforce any security interest that secures such obligations.

If this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the property, I will note your interest on the face of the chattel paper or instruments.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to

Any person who signs within this box does so to give you a security interest in the property described on page 1. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

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_____ _____

keep the property insured, if required; (3) I to pay, or keep any promise, on any debt or agreement I have with (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) I change my name or assume an additional name without first notifying you before making such a change; (9) failure to plant, cultivate and harvest crops in due season; (10) if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the property for purposes of perfecting your security interest under the Uniform Commercial Code.

CO-MAKERS - If more than one of us has signed this agreement, we are all obligated equally under the agreement. You may sue any one of us or any of us together if this agreement is violated. You do not have to tell me if any term of the agreement has not been carried out. You may release any co-signer and I will still be obligated under this agreement. You may release any of the security and I will still be obligated under this agreement. Waiver by you of any of your rights will not affect my duties under this agreement. Extending this agreement or new obligations under this agreement, will not affect my duty under the agreement.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "☒" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "me"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of West Virginia will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full unless, when I make the prepayment, you and I agree in writing to the contrary). If I prepay in full, any paid, unearned premiums for any insurance policy insuring me, naming you as loss payee, and for any insurance covering the property securing this note, will be applied against the outstanding balance to reduce the amount I owe.

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD - The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

(1) any deposit account balance I have with you;

(2) any money owed to me on an item ...

If my right to receive money from you is also owned by someone who has not agreed to pay note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY - If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).

(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein.

(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.

(4) You may refuse to make advances to me or allow purchases on credit by me.

(5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

EXCEPTIONS *- The following two paragraphs apply if this is a consumer loan under the West Virginia Consumer Credit and Protection Act.*

After I am in default on this note for five or more days, for failing to make a scheduled payment when due, you must provide me with a written notice of my default and my right to cure. I have 10 days after you mail this notice (or 10 days after actual delivery if you use a means other than first class mail) in which to cure the default. You may exercise your remedies only if I fail to cure the default within the time allowed after the notice.

No notice of default and right to cure is necessary, and you may immediately exercise any and all of your remedies, if:

(1) my default consists of failure to provide insurance or otherwise protect and preserve any property securing this note; or

(2) I have previously defaulted three or more times on this note and have previously been given a notice of default and right to cure.

COLLECTION COSTS AND ATTORNEYS' FEES - If this loan is subject to the West Virginia Consumer Credit and Protection Act, and I am in default, I agree to pay your reasonable expenses you incur in realizing on a security interest, including costs and fees authorized by law. If this loan is not subject to the West Virginia Consumer Credit and Protection Act, and I am in default, I agree to pay your reasonable attorneys' fees, all costs of collection and any expenses you incur in realizing on a security interest unless otherwise prohibited by law. To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

(1) demand payment of amounts due (presentment);

(2) obtain official certification of nonpayment (protest); or

(3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may do so without any notice that it has not been paid (notice of dishonor). You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will

91 7108 2133 3936 3214 2297

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

February 6, 2009

Raymond Biller, Chairman
Harpers Ferry – Bolivar Public Service District
P. O. Box 235
Harpers Ferry, WV 25425

CERTIFIED RETURN RECEIPT REQUESTED
Re: WV/NPDES Permit No. WV0039136
Modification No. 1

Dear Mr. Biller:

This correspondence shall serve as Modification No. 1 of your existing WV/NPDES Water Pollution Control Permit No. WV0039136, issued the 23rd day of March 2006.

After review and consideration of the information submitted on, and with, Permit Modification Application No. WV0039136-A, dated the 16th day of December 2008, the plans and specifications, and other relevant information, the subject Permit is hereby modified to acquire, construct, install, operate and maintain a sludge dewatering belt press system to replace the existing sludge drying beds and sludge dewatering bagging system.

The wastewater treatment plant improvements project shall be constructed in accordance with the plans and specifications, approved the 23rd day of December 2008, prepared by Alpha Associates, Incorporated; 535 West King Street; Martinsburg, WV 25401, and entitled "Harpers Ferry – Bolivar PSD, Harpers Ferry District, Jefferson County, West Virginia; Wastewater Treatment Plant Improvements Phase 1; SRF Project No. C-544429."

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain unchanged and in effect.

Sincerely,

Scott G. Mandirola
Acting Director

SGM:jdm
cc: Environmental Enforcement

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57TH STREET SE
CHARLESTON, WV 25304-2345

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

NPDES PERMIT NO.: WV0039136
SUBJECT: Sewage

ISSUE DATE: March 23, 2006
EFFECTIVE DATE : April 22, 2006
EXPIRATION DATE: March ~~22, 2011~~
SUPERSEDES: Permit No. WV0039136 dated May 11, 2000

LOCATION: HARPERS FERRY (City) Jefferson (County) Shenandoah River 2 (Drainage Basin)

See the next page for a list of Outlets.

TO WHOM IT MAY CONCERN:

This is to certify that: HARPERS FERRY-BOLIVAR PSD
PO BOX 235
HARPERS FERRY, WV 25425

is hereby granted a West Virginia NPDES Water Pollution Control Permit to: operate and maintain an existing 0.3 million gallons per day (MGD) sewage collection and treatment system which is further described as follows:

The wastewater collection system is comprised of approximately 900 linear feet of four (4) inch diameter gravity sewer line, 10 linear feet of six (6) inch diameter gravity sewer line, 41,312 linear feet of eight (8) inch diameter gravity sewer line, 6,740 linear feet of 12 inch diameter gravity sewer line, 686 linear feet of 16 inch diameter gravity sewer line, 250 manholes, five (5) cleanouts, 14 lift stations, 4,600 linear feet of four (4) inch and eight (8) diameter force main line, and all necessary appurtenances.

The wastewater treatment plant is comprised of a bar screen, two (2) 189,000 gallon aeration Chambers, two (2) 41,000 gallon clarifier each, one (1) 12,000 gallon disinfection unit, and all necessary appurtenances.

Facilities are designed to serve approximately 3,000 persons in the Harpers Ferry - Bolivar Public Service District and discharge treated wastewater to the Shenandoah River (approximately 1 mile from its mouth) of the Potomac River.

This permit is subject to the following terms and conditions :
The information submitted on and with Permit Application No. WV0039136 dated the 2nd day of August 2005 and additional information received on January 5, 2006, are all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, D, E, and Appendix A.

The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Inspectable Unit	Latitude	Longitude	Receiving Stream	Dist. to Stream Mouth (in Mile)	Milepost
001	39°19'16"	77°44'43"	SHENANDOAH RV	N/A	N/A
S01	39°19'16"	77°44'43"	N/A	N/A	N/A

A.001 DISCHA E LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning April 22, 2006 and lasting through midnight March 22, 2011 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units	Other Units			Units	Measurement Frequency	Sample Type
Flow,in Conduit or thru plant (Year Round) (ML-1)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	N/A	mgd	Continuous	measured
Refer to Section C.11. & C.12.									
BOD, 5-Day 20 Deg.C (Year Round) (ML-B)	75.1 Avg. Monthly	150.2 Max. Daily	Lbs/Day	N/A	30 Avg. Monthly	60 Max. Daily	mg/l	1/month	8 hr comp
Total Suspended Solids (Year Round) (ML-A)	75.1 Avg. Monthly	150.2 Max. Daily	Lbs/Day	N/A	30 Avg. Monthly	60 Max. Daily	mg/l	1/month	8 hr comp
BOD, % Removal (Year Round) (ML-K)	N/A	N/A	N/A	N/A	85 Avg. Monthly	N/A	Percent	1/month	Calculated
Refer to Section C.14.									
Suspended Solids, % Removal (Year Round) (ML-K)	N/A	N/A	N/A	N/A	85 Avg. Monthly	N/A	Percent	1/month	Calculated
Refer to Section C.14.									
Coliform, Fecal (Year Round) (ML-A)	N/A	N/A	N/A	N/A	200 Mo. Geo. Mean	400 Max. Daily	Cnts/100ml	1/month	Grab
Refer to Section C.13.									
pH (Year Round) (ML-A)	N/A	N/A	N/A	6 Inst. Min.	N/A	9 Inst. Max.	S.U.	1/month	Grab
Ammonia Nitrogen (Year Round) (ML-A)	20.6 Avg. Monthly	41.2 Max. Daily	Lbs/Day	N/A	8.2 Avg. Monthly	16.4 Max. Daily	mg/l	1/month	8 hr comp
Nitrogen, Total (AS N) (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Daily Min.	mg/l	1/quarter	8 hr comp
Refer to Section E.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

All effluent samples shall be collected at, or as near as possible to, the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHA..GE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning April 22, 2006 and lasting through midnight March 22, 2011 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Phosphorus, Total (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Refer to Section E.									
Chlorine, Total Residual (Year Round) (ML-A)	N/A	N/A	N/A	N/A	28 Avg. Monthly	57 Max. Daily	ug/l	1/month	Grab
Copper, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Refer to Section C.15, C.16, C.17 & C.18.									
Lead, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Refer to Section C.15, C.16, C.17 & C.18.									
Zinc, Total Recoverable (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Refer to Section C.15, C.16, C.17 & C.18.									
Hardness, Total (as CaCO3) (Year Round) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Refer to Section C.21.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

All effluent samples shall be collected at, or as near as possible to, the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.S01 SEWAGE SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning April 22, 2006 and lasting through midnight March 22, 2011 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Quantity		Units	Limitations	Other Units		Units	Monitoring Requirements Measurement Frequency	Sample Type
Coliform, Fecal (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	col/gr	1/6 months	Grab
pH (Year Round) (ML-+)	N/A	N/A	N/A	Rpt Only Min.	N/A	Rpt Only Max.	S.U.	1/6 months	Grab
Arsenic, Sludge Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	20 Max.	mg/kg	1/6 months	1/wk Comp
Cadmium,Sludge,Tot Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	39 Max.	mg/kg	1/6 months	1/wk Comp
Chromium, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	1000 Max.	mg/kg	1/6 months	1/wk Comp
Copper,Sludge,Tot,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	1500 Max.	mg/kg	1/6 months	1/wk Comp
Lead, Dry. Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	250 Max.	mg/kg	1/6 months	1/wk Comp
Mercury, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	10 Max.	mg/kg	1/6 months	1/wk Comp
Molybdenum,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	18 Max.	mg/kg	1/6 months	1/wk Comp

A.S01 SEWA(LUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning April 22, 2006 and lasting through midnight March 22, 2011 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Quantity		Units	Limitations	Other Units		Units	Monitoring Requirements: Measurement Frequency	Monitoring Requirements: Sample Type
Nickel, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	200 Max.	mg/kg	1/6 months	1/wk Comp
Selenium,Sludge,Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	36 Max.	mg/kg	1/6 months	1/wk Comp
Zinc, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	2800 Max.	mg/kg	1/6 months	1/wk Comp
Calcium, Total (as Ca) (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp
Solids, Total Sludge Percent (Year Round) (ML-+)	N/A	N/A	N/A	Rpt Only Min.	Rpt Only Avg.	Rpt Only Max.	Percent	1/6 months	1/wk Comp
Potassium, Sludge Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp
Phosphorus,Sludge,Tot,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp
Nitrogen, Ammonia Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp
Nitrogen, Sludge Tot. Dry Wt (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp

A.S01 SEWAGE SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning April 22, 2006 and lasting through midnight March 22, 2011 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Organic Nitrogen (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp
Magnesium,Tot (as Mg) (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/6 months	1/wk Comp

B. SCHEDULE OF COMPLIANCE

1. The permitee shall achieve compliance with the provisions for waste treatment and the monitoring requirements specified in the permit in accordance with the following schedule :

   Effective date of permit.

2. Reports of compliance or non-compliance with, and progress reports on interim and final requirements contained in the above compliance schedule, if any, shall be postmarked no later than 14 days following each schedule date.

Section C - Other Requirements

1. The herein-described treatment works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected one hundred (100) year flood level and operability be maintained during the twenty-five (25) year flood level.
2. The entire sewage treatment facility shall be adequately protected by fencing.
3. The proper operation and maintenance of the listed sewage treatment facility shall be performed, or supervised, by a certified operator possessing at least a Class II certificate for Waste Water Treatment Plant Operators as issued by the State of West Virginia. The on-site attendance of this facility's Class II operator shall be determined and directed by the Bureau for Public Health, Office of Environmental Health Services.
4. The arithmetic mean of values for effluent samples collected in a seven consecutive day period shall not exceed 45.0 mg/l for BOD5 and TSS. Furthermore, the permittee may submit mitigating factors as an attachment to its DMRs related to an excursion of this requirement. The Director may choose to take those mitigating factors into consideration in determining whether enforcement action is required.
5. The permittee shall submit each month (Once/Month) according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration and/or quantities the values of the constituents listed in Section A analytically determined to be in the plant effluent(s). Additional information pertaining to effluent monitoring and reporting can be found in Section III of Appendix A.
6. The required DMRs should be received no later than 20 days following the end of the reporting period and be addressed to:

   Director
   Division of Water and Waste Management
   601 57th Street SE
   Charleston, West Virginia 25304
   Attention: Permitting Section
7. The permittee shall not use alternate DMRs without prior approval from this Agency.
8. The permittee shall not accept any new non-domestic discharges without first obtaining approval from the Director of the Division of Water and Waste Management as provided in Title 47, Series 10, Section 14 of the West Virginia Legislative Rules.
9. If any existing non-domestic discharge causes, or is suspected of causing, interference or pass through (as defined by 40 CFR 403.3) or otherwise violates any provision of 40 CFR 403, the permittee shall notify the Director of such violation or suspected violation.
10. If any existing non-domestic discharge is identified as being subject to Categorical Pretreatment Standard under 40 CFR Chapter 1, Subchapter N, and the discharge is not regulated by this permit, the permittee shall notify the Director of such identification.
11. The average daily design flow of the Publicly Owned Treatment Works has been established at 0.3 million gallons per day (MGD). When the average monthly effluent flow reported on Discharge Monitoring Reports reaches, or exceeds, 90 percent of the average design flow, 0.27 MGD (90% of design flow) during three (3) consecutive monthly periods, the permittee shall submit a Plan of Action to the Director. The Plan of Action shall present, at a minimum, an analysis of current hydraulic and organic loadings on the plant, an analysis of the future projected loadings, and a Schedule of Tasks to accomplish procedures necessary to maintain required treatment levels.
12. Any future collection system extensions projected to cause an increase in the wastewater flow, equal to, or greater than, 15,000 gallons per day (five (5) percent of average design flow) shall require the permittee to contact the Director to secure approval of the extension. After consideration of the complexity of the project, and the available treatment capacity of the facility, the Director may require the permittee to seek approval through Modification of the Permit.
13. Over the term of this permit, the permittee is allowed up to one(1) excursion(s) of the maximum daily fecal coliform effluent limitation prescribed in Section A.001 (Final Requirements). The number of allowed excursions is based upon one (1) percent of the number of required self-monitoring events. Utilization of the excursion allowance is conditioned as follows.

Section C - Other Requirements

13. a. Excursion allowances are afforded only to self-monitoring results and only when self-monitoring activities assess compliance with the maximum daily effluent limitation by analysis of an individual grab sample. No excursion allowance can be applied to analytical results obtained by representatives of the Director in the performance of their compliance assessment activities. Additionally, representatives of the Director may assess compliance with the maximum daily effluent limitation by collection and analysis of an individual grab sample.

    b. The excursion allowance is contingent upon the permittee's prompt return to compliance as evidenced by the next required fecal coliform self-monitoring event.

    c. The result for which an excursion allowance is claimed shall be included in the calculation of the average monthly effluent value.

    d. Should an excursion allowance be utilized by the permittee, said allowance must be reported as an attachment to the Discharge Monitoring Report. This attachment should state that (1) an excursion allowance was taken in accordance with the conditions outlined above, (2) the total number of allowances taken to date during the term of this permit, and (3) the total number of allowances remaining during the term of this permit. The permittee shall maintain an on-site record of the excursion allowances utilized during the term of the permit.

14. The permittee shall be required to test the sewage treatment plant's influent in order to calculate the percent (%) removal parameters for BOD5 and TSS contained in Section A.001 of this permit. Influent sampling requirements include:

    a. Percent removal shall be defined as a percentage expression of the removal efficiency across the wastewater treatment plant for a given pollutant parameter, as determined from the thirty day average values of the influent concentrations to the facility and the thirty day average effluent pollutant concentrations. Only influent and effluent samples taken concurrently as specified below shall be used for reporting.

    b. Influent BOD5 and TSS samples shall be collected using the permittee's established sampling schedule at least once per month (1/month) for the wastewater treatment facility.

    c. The permittee shall collect representative BOD and TSS influent samples using their established sampling procedures over a eight(8) hour period.

    d. Influent BOD5 and TSS sampling shall be performed over the same eight (8) hour time period as the effluent BOD5 and TSS sampling.

15. The analytical test procedures, set forth in 40 CFR Part 136, prescribe colorimetric methods for certain parameters. The digestion process for the performance of total recoverable is not sufficient for the utilization of a colorimetric procedure. Therefore, colorimetric procedures shall not be acceptable for the analysis of parameters prescribed as total recoverable.

16. Effluent monitoring for the Copper, Lead, and Zinc parameters shall be conducted using the most sensitive methods and detection levels commercially available and economically feasible. The following methods and detection levels are offered as a guide:

Parameter	EPA Method No.	Recommended Detection Level (ug/l)
Copper (TR)	220.2	1
Lead (TR)	239.2	1
Zinc (TR)	289.2	1

17. Any "not detected (ND)" results by the permittee must be "ND" at the method detection limit (MDL) for the test method used for that parameter and must be reported as less than the MDL used. The permittee may not report the result as zero, "ND", or report the result as less than a minimum level (ML), reporting limit (RL), or practical quantitation limit (PQL).

    When averaging values of analytical results for DMR reporting purposes for monthly averages, the permittee should use actual analytical results when these results are greater than or equal to the MDL and should use zero (0) when these results are less than the MDL. If all analytical results are non-detect at the MDL (<MDL), then the permittee should use the actual MDL in the calculation for averaging and report the result as less than the average calculation.

Section C - Other Requirements

18. In incidences where a specific test method is not defined, the permittee shall utilize an EPA approved method with a method detection limit (MDL) sensitive enough to confirm compliance with the permit effluent limit for that parameter. If a MDL is not sensitive enough to confirm compliance, the most sensitive approved method must be used. If a more sensitive EPA approved method becomes available, that method shall be used. Should the current and/or new method not be sensitive enough to confirm compliance with the permitted effluent limit, analytical results reported as "not detected" at the MDL of the most sensitive method available will be deemed compliant for purposes of permit compliance. Results shall be reported on the Discharge Monitoring Reports as a numeric value less than the MDL.
19. Unless otherwise authorized under Section A of this permit, any discharge from any point other than a permitted treatment outfall or permitted combined sewer system is expressly prohibited. In the event there is a prohibited discharge from a sewer conveyance system, the permittee shall follow the reporting requirements contained in Appendix A, Part IV, Section 2.
20. All effluent samples shall be collected at, or near as possible to, the point of discharge. Effluent BOD5 samples shall be properly labeled and then reseeded, in accordance with approved procedures, prior to analysis.
21. A Total Hardness sample is to be collected from the receiving stream at a point immediately upstream of the effluent discharge.

Section D - Sewage Sludge Management Requirements

1. The permittee shall monitor and report monthly on the enclosed Sewage Sludge Management Report form the quality and quantity of sewage sludge produced. The required report shall be received no later than 20 days following the end of the reporting period and be addressed to:

   Director
   Division of Water and Waste Management
   601 57th Street SE
   Charleston, West Virginia 25304
   Attention: Permitting Section

2. The permittee shall provide copies of monthly reports to the county or regional solid waste authority in which the facility or land application site(s) is located.

3. The Sewage Sludge Monitoring Report form shall be submitted semiannually. The required report shall be received no later than 20 days following the end of the reporting period and shall be addressed to:

   Director
   Division of Water and Waste Management
   601 57th Street SE
   Charleston, West Virginia 25304
   Attention: Permitting Section

4. The following method(s) of sludge disposal shall be used for sewage sludge generated and/or processed at the permitted facility:

   a. Land Application: Sewage sludge shall not be applied in a manner or in an amount that would cause the land application site(s) to exceed the annual, five (5) year cumulative, and lifetime loading rates as listed below. The following site(s) may be used for land application:

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five (5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Edward L. Boyd & Sons			
Boyd 1	1.6	6.2	127
Boyd 2	1.6	6.2	127
Boyd 3	1.6	6.2	127
Boyd 4	1.6	6.2	127

   b. Landfill Disposal: Sewage sludge may also be disposed at a landfill by placing the sewage sludge in the landfill cell, provided that the landfill obtains approval from the Division of Water and Waste Management to allow the acceptance of sewage sludge from the permittee, and provided that the landfill(s) is/are identified in the permit application. Prior approval by the Division of Water and Waste Management is required to change landfill disposal site(s).

5. Sewage sludge shall not be applied to land that has any of the following siting restrictions and/or location standards:

   a. Land that is frozen, snow-covered, or known to be flooded on a regular basis unless the applicant can demonstrate to the Secretary that the land application will not cause runoff into streams or wetlands.

   b. Land that is within 50 feet of surface water including any streams, springs, ponds, wetlands, or other collection points for surface water.

   c. Land that is within 200 feet of drinking water supply wells or other personal water supply.

   d. Land that is within 200 feet of an occupied dwelling.

   e. Land that is within 50 feet of a federal or state highway.

   f. Land that is within 100 feet of an adjacent property owner's property line.

   g. Land that drains into a sinkhole.

Section D - Sewage Sludge Management Requirements

5. h. Land that has been tested and determined to have a pH of less than 6.2 S.U., unless the pH is adjusted to 6.2 S.U. or greater.

   i. Land that has a slope greater than 15 percent.

   j. Land that has a seasonal high groundwater table less than two (2) feet from the surface.

   k. Land that has less than 6 inches of soil over bedrock or an impervious pan.

   l. Land that contains soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

   m. Land that, if sewage sludge was applied, is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

   n. Other land determined by the Secretary to be unsuitable for application of sewage sludge.

6. The following requirements concerning crops grown on land used for application of sewage sludge, the time requirements between application of sewage sludge and the harvesting of crops, and the restrictions on animal grazing and public access shall be met:

   a. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

   b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four (4) months or longer prior to incorporation into the soil.

   c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four (4) months prior to incorporation into the soil.

   d. Food crops (human consumption), feed crops (animal consumption), and fiber crops shall not be harvested for 30 days after application of sewage sludge.

   e. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.

   f. Turf grown on land where sewage sludge is applied shall not be harvested for one (1) year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

   g. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.

   h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

7. Sewage sludge shall not be stored at a land application site for a period longer than one week; except, storage can be allowed for a period not to exceed three months when provisions, approved by the Director of the Division of Water and Waste Management of the Department, are made to prevent leachate runoff to the surface water and/or groundwater.

8. Sewage sludge shall only be land applied during the hours of daylight.

9. Sewage sludge which is land applied shall not contain excessive amounts of other solid waste materials, as defined in Title 33, Series 2, Section 2.34 of the Legislative Rules.

10. Areas used for processing, curing, and/or storage of sewage sludge shall be designed, constructed and operated to prevent release of contaminants to the groundwater and/or surface water.

11. The land application site(s) shall maintain the soil pH at a minimum of 6.2 S.U. for at least five (5) years from the date of application. The soil pH and soil nutrients shall be monitored once per year by obtaining a composite sample of each field utilized for land application during the previous year. The composite samples shall be made up of a minimum of four (4) aliquots taken at locations equally spaced through the land application site(s). The samples may be analyzed through the WVU Extension Service or by other certified laboratories.

Section D - Sewage Sludge Management Requirements

12. All analyses performed on soils and sewage sludges shall be analyzed in accordance with analytical methods listed in 40 CFR Part 503.8 except that Nutrients may be analyzed in accordance with the most recently approved edition of Standard Methods and pH may be analyzed using EPA Method 9045A. Additionally, Fecal Coliform samples shall be prepared for analysis by using the method described in EPA 625R-92/013, Appendix F.

13. Sewage sludge disposed in a landfill cell shall be a non-hazardous material as defined in 40 CFR Part 261.24 and a minimum of 20 percent solids. If the sewage sludge is not 20 percent solids, a bulking agent may be used to achieve 20 percent solids before the sewage sludge is weighed in at the landfill. Alternative sludge disposal methods at the landfill can be utilized upon obtaining prior written approval from the Director of the Division of Water and Waste Management.

14. If sewage sludge is used for revegetation, or spread in any other manner at the landfill, the sewage sludge shall meet all of the land application requirements. These requirements include vector attraction and pathogen reduction methods, heavy metals limits, and abiding by an approved loading rate based on soil analyses.

15. The following primary method for pathogen reduction shall apply to the sewage sludge or sewage sludge products:

    a. Lime Stabilization - Lime is added to maintain the sewage sludge pH above 12.0 S.U. for at least two (2) hours after the lime addition. The permittee shall record the pH of the sewage sludge at least twice, once upon addition of lime and once two (2) hours after addition.

    b. If compliance cannot be achieved using the primary method for pathogen reduction, then the permittee must obtain approval from the Director prior to use of a secondary method. The permittee shall not dispose of sewage sludge until approval of a secondary pathogen reduction method is granted.

16. The following primary method for vector attraction reduction shall apply to the sewage sludge or sewage sludge products:

    a. Lime Stabilization - Lime is added to maintain the sewage sludge pH above 12.0 S.U. for two (2) hours and above 11.5 S.U. for 24 hours after the lime addition. The permittee shall record the pH of the sewage sludge at the 0, 2, and 24 hour intervals of treatment, and record the duration of time (hours) that the pH is maintained at or above the specified minimum levels.

    b. If compliance cannot be achieved using the primary method for vector attraction reduction, then the permittee must obtain approval from the Director prior to using a secondary method. The permittee shall not dispose of sewage sludge until approval of a secondary vector attraction reduction method is granted.

17. The permittee shall maintain all records and reports of all monitoring required by Section D of this permit for five (5) years after the date of monitoring or reporting. Records should include all sample results, including pathogen and vector attraction reduction monitoring; any landfill receipts; land application records, including site maps, the landowner agreement, soil sample results, daily and cumulative sludge loading rate information; copies of all required reports; and records of all data used to complete these reports.

Sodhir Patel - 926-0499 - Ext 1295
Dustin Holmes - Ext 1294

Section D - Sewage Sludge Management Requirements

18. The appropriate composite sampling procedures shall be based upon the particular sludge processing methods used by the permittee. The composite sampling procedures for the various methods are described as follows:

    Belt Press or Vacuum Filter - During the week that the composite sample is obtained, the permittee shall take a minimum of three (3) grab samples during each day of the week that the dewatering system is in operation. These grab samples are to be mixed together and the final sample obtained from the composite. Samples should be collected at a point immediately after the dewatering operation.

    Liquid Sludge - During the week that the composite sample is obtained, the permittee shall take a representative grab sample from each truck load of sewage sludge hauled during that week. These grab samples are to be mixed together and the final sample obtained from the composite. Samples should be collected from the sewage sludge being pumped into the truck or as the sewage sludge is being discharged from the truck.

    Sewage Sludge Drying Beds - During the week that the composite sample is obtained, the permittee shall take a minimum of four (4) grab samples from each bed finished during that week. These grab samples are to be mixed together and the final sample obtained from the composite.

    Composting or Stock Piles - The permittee shall obtain a minimum of eight (8) grab samples from the pile of finished product. These grab samples are to be mixed together and the final sample obtained from the composite.

19. Written notification shall be given to the Director within five (5) days of the determination of any excursion(s) of the maximum allowable limitations for sewage sludge listed in Section A.S01 of this Permit. A written plan to identify and correct the excursion(s) must be submitted to the Director within sixty (60) days.

20. No single instantaneous grab sample of the final sewage sludge product shall exceed the values found below as listed in Table 2 of the West Virginia Sewage Sludge Management Regulations (Title 33, Series 2).

Metal	Concentration (mg/kg)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

21. Sewage sludge shall not be land applied in a manner or in an amount that will cause the land application site(s) to exceed the maximum soil concentrations for the following heavy metals:

Parameter	Maximum Allowable Limitations For Soils (mg/kg)
Arsenic	13.0
Cadmium	2.4
Chromium	290.0
Copper	92.0
Lead	85.0
Mercury	2.4
Molybdenum	4.6
Nickel	83.0*
Selenium	10.0
Zinc	290.0**

* For sandy to silt loam soils with a permeability greater than 2.0 inches per hour, the maximum allowable soil concentration for nickel is 50.0 mg/kg.

** For those sites with greater than 30% legume species, the maximum allowable soil concentration for zinc is 130.0 mg/kg for sandy to silt loam soils with permeability greater than 2.0 inches per hour and 200.0 mg/kg for other soil types.

Section D - Sewage Sludge Management Requirements

22. All land application site(s) shall have new soil analyses performed for the metals listed in Section D.21 of this Permit when the cumulative loading reaches 50% of the assigned lifetime loading rate.

23. Should any landowner of a sludge land application site fail to comply with the terms and conditions pertaining to the landowner under an applicable landowner agreement, the permittee shall immediately contact said landowner and identify the violation causing the noncompliance with the said agreement. The permittee shall take all reasonable, escalating enforcement steps, up to and including disallowing further land application of sludge on the owner's site, in order to keep the landowner compliant with the terms and conditions of said land owner agreement. Also, the permittee shall immediately inform the Agency of any current noncompliance by the owner of a land application site by attaching a written summary of these violations, the cause of each violation, and the steps taken to prevent their recurrence with the submitted Sludge Monitoring Reports. Should the permittee take all of the enforcement steps outlined above, these actions may be used as a mitigating factor to any enforcement actions taken upon the permittee for the noncompliance by the land application site owners to the terms and conditions of Section D herein. However, the burden of proof in relation to the use of this mitigating factor shall lie exclusively upon the permittee. This condition shall not be used as a mitigating factor to any noncompliance associated with any other sections of this permit, even if said noncompliance is, in whole or in part, caused by the land application site owner.

Section E - Nutrient Requirements

1. As a headwater partner in the Chesapeake Bay Program, West Virginia, along with the other Bay States, has developed a Tributary Strategy to reduce the amount of nutrients (nitrogen and phosphorous) flowing into the Chesapeake Bay. The permittee discharges to Shenandoah River which is a tributary to the Potomac River Basin. In accordance with West Virginia's Tributary Strategy, the following requirements apply to the permittee:

   The permittee is an existing facility and has an established average design flow of 0.3 MGD. Nitrogen and phosphorous permit limitations are based on concentrations of 5 mg/l and 0.5 mg/l respectively.

2. Permit limitations for total nitrogen and total phosphorous are being implemented on an Annual Total Load basis. The Annual Total Load Limitations shall be attained in accordance with the following:

   a. The Division recognizes there is not an EPA approved method to directly test for Total Nitrogen. The Total Nitrogen value to be reported on the permittee's Discharge Monitoring Reports (DMRs) shall be the sum of the following parameters:
   Total Kjeldahl Nitrogen, Nitrate, and Nitrite.

      1) If all three constituents of total nitrogen are not detected at its method detection limit (MDL), the permittee shall sum the actual MDLs for each constituent and report the result as less than the calculation.

      2) When calculating the sum of the constituents for total nitrogen, the permittee shall use actual analytical results when these results are greater than or equal to the MDL for a particular constituent and should use zero (0) for a constituent if one or two of the constituents are less than the MDL.

   b. Effluent monitoring for the following pollutants shall be conducted using the most sensitive methods and detection levels commercially available and economically feasible. The following methods and detection levels are recommended to be used unless the permittee desires to use an EPA Approved Method with a lower detection level:

Parameter	EPA Method No.	Method Detection Limit (mg/l)
Total Kjeldahl Nitrogen	351.4	0.03
Nitrate Nitrogen	300.0	0.002
Nitrite Nitrogen	300.0	0.004
Total Phosphorous	365.4	0.01

   Any "not detected (ND)" results by the permittee must be "ND" at the method detection limit (MDL) for the test method used for that parameter and must be reported as less than the MDL used (See Section 2.a for nitrogen). The permittee may not report the result as zero, "ND", or report the result as less than a minimum level (ML), reporting limit (RL), or practical quantitation limit (PQL).

   c. The permittee shall collect eight (8) hour composite samples for total phosphorous and for each constituent of total nitrogen. All sampling shall be collected concurrently and shall be representative of normal operations.

   d. The actual total (not the average) monthly flow shall be used in conjunction with the total nitrogen and total phosphorous concentration results in order to determine the total monthly mass results for DMR reporting purposes.

   [Total Flow Discharged in Month (Million Gallons per Month)] * [Nutrient Concentration (mg/l)] * [8.34] = Monthly Load (lbs/month)

   e. The sum of total monthly mass results for total nitrogen and total phosphorous shall not exceed the following annual mass limitations for any calendar year.

Parameter	Annual Total Load Limit
Total Nitrogen	4,566 lbs/yr
Total Phosphorous	457 lbs/yr

   f. As a guideline, the permittee shall measure its monthly performance to determine if operations will achieve the annual total load limits. If the total monthly load exceeds 381.0 lbs/month for nitrogen or 38.0 lbs/month for phosphorous, the permittee shall submit written documentation which explains the elevated monthly totals and the rationale for ensuring that the annual loads will still be achieved in future months.

Section E - Nutrient Requirements

3. With the wastewater treatment technology being applied by this permit, the permittee is presently unable to achieve the annual mass limitations for total nitrogen and total phosphorous. The permittee is being granted a five (5) year period to achieve the Annual Total Loads. The permittee shall submit a Plan of Action within one year for achieving final effluent limitations, a cost evaluation for final compliance, and a description of the process intended for procuring the necessary funds to meet the final effluent limitations including an impact on sewer rates. The permittee shall submit quarterly progress reports thereafter until compliance has been attained with the final effluent limitations.

4. As described by the state tributary strategy, the permittee shall be responsible for identifying offsets to the total annual load of nitrogen and phosphorus generated by this discharge in accordance with guidance provided by the agency.

   At present, no trading or offset program has been established by the State. Proposals will be evaluated on a case-by-case basis until a trading and/or offset program has been established.

5. The permittee shall submit an Annual report on or before February 1 each year which summarizes the previous calendar year's nutrient data. This may be accomplished in letter form and shall include all calculations of the calendar year mass loadings reported. In general, this report shall include a table depicting the monthly information for the previous calendar year.

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0039136; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0039136; and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and the invocation of all the enforcement procedures set forth in Chapter 22, Article 11, or 15 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 and 12 and/or 15 of the Code of West Virginia and is transferable under the terms of Section 11 of Article 11.

Lisa A. McClung, Director

NOTICE TO PERMITTEES

The 1999 regular session of the West Virginia legislature revised the Water Pollution Control Act, Chapter 22, Article 11, Section 10 of the Code of West Virginia relating to fees associated with permits. This section of the Code requires all holders of a State water pollution control permit or a national pollutant discharge elimination system permit to be assessed an annual permit fee, based upon rules promulgated by the Secretary of the Department of Environmental Protection. The Secretary has promulgated a final rule in accordance with the code revision to this effect and these rules were effective May 4, 2000. The rules establish an annual permit fee based upon the relative potential to degrade the waters of the State which, in most instances, relate to volume of discharge. However, for sewage facilities, the annual permit fee is based upon the number of customers served by the facility. You may contact the Secretary of State's Office, State Capitol Building, Charleston, WV 25305, to obtain a copy of the rules. The reference is Title 47, Legislative Rules, Department of Environmental Protection, Division of Water Resources, Series 26 Water Pollution Control Permit Fee Schedules.

Based upon the volume of discharge for which your facility is currently permitted, the number of customers served by your facility or for the category you fall within, pursuant to Section 7 of Title 47, Series 26, your annual permit fee is **$250.00**. This fee is due no later than the anniversary date of permit issuance in each year of the term of the permit or in the case of coverage under a general permit, the fee is due no later than the anniversary date of your coverage under the general permit. **You will be invoiced by this agency at the appropriate time for the fee.** Failure to submit the annual fee within ninety(90) days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

Appendix A

I. MANAGEMENT CONDITIONS:

1. **Duty to Comply**
   a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.
   b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
2. **Duty to Reapply**
   If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit at least 180 days prior to expiration of the permit.
3. **Duty to Mitigate**
   The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.
4. **Permit Actions**
   This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
5. **Property Rights**
   This permit does not convey any property rights of any sort or any exclusive privilege.
6. **Signatory Requirements**
   All applications, reports, or information submitted to the Director shall be signed and certified as required in Title 47, Series 10 , Section 4.6 of the West Virginia Legislative Rules.
7. **Transfers**
   This permit is not transferrable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.
8. **Duty to Provide Information**
   The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
9. **Other Information**
   Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
10. **Inspection and Entry**
    The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
    a) Enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
    b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
    c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
    d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.
11. **Permit Modification**
    This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22-11-12 of the Code of West Virginia.
12. **Water Quality**
    Subject to 47 WV CSR 10.3.4.a, the effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the Environmental Quality Board.
13. **Outlet Markers**
    A permanent marker at the establishment shall be posted in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules.
14. **Liabilities**
    a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308 or 405 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
    b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years, or by both.
    c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years, or by both.
    d) Nothing in I.14 a), b), and c) shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

II. OPERATION AND MAINTENANCE:

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by the WV Bureau of Public Health Laws, W. Va. Code Chapter 16-1, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Director may require a more highly skilled operator.

2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

3. Bypass

a) Definitions
   (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
   (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of IL3.c) and IL3.d) of this permit.

c) (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;
   (2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in IV.2.b) of this permit.

d) Prohibition of bypass
   (1) Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for a bypass, unless;
      (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
      (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
      (C) The permittee submitted notices as required under IL3.c) of this permit.
   (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in IL3.d.(1) of this permit.

4. Upset

a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitation if the requirements of IL4.c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
   (2) The permitted facility was at the time being properly operated;
   (3) The permittee submitted notice of the upset as required in IV.2.b) of this permit.
   (4) The permittee complied with any remedial measures required under I.3. of this permit.

d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Director, any solids, sludges, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

III. MONITORING AND REPORTING

Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Reporting

a) Permittee shall submit, according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A analytically determined to be in the plant effluent(s). DMR submissions shall be made in accordance with the terms contained in Section C of this permit.

b) Enter reported average and maximum values under "Quantity" and "Concentration" in the units specified for each parameter, as appropriate.

c) Specify the number of analyzed samples that exceed the allowable permit conditions in the columns labeled "N.E." (i.e., number exceeding).

d) Specify frequency of analysis for each parameter as number of analyses/specified period (e.g.,3/month is equivalent to 3 analyses performed every calendar month). If continuous, enter "Cont.". The frequency listed on format is the minimum required.

3. Test Procedures

Samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136, unless other test procedures have been specified elsewhere in this permit.

4. Recording of Results

For each measurement or sample taken pursuant to the permit, the permittee shall record the following information.

a) The date, exact place, and time of sampling or measurement;

b) The date(s) analyses were performed;

c) The individual(s) who performed the sampling or measurement;

d) The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;

e) The analytical techniques or methods used, and

f) The results of such analyses. Information not required by the DMR form is not to be submitted to this agency, but is to be retained as required in III.6.

5. Additional Monitoring by Permittee

If the permittee monitors any pollutant at any monitoring point specified in this permit more frequently than required by this permit, using approved test procedures or others as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

7. Definitions

a) "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

b) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

c) "Maximum daily discharge limitation" means the highest allowable daily discharge.

d) "Composite Sample" is a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two hours.

e) "Grab Sample" is an individual sample collected in less than 15 minutes.

f) "is" = immersion stabilization - a calibrated device is immersed in the effluent stream until the reading is stabilized.

g) The "daily average temperature" means the arithmetic average of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.

h) The "daily maximum temperature" means the highest arithmetic average of the temperatures observed for any two (2) consecutive hours during a 24 hour day, or during the operating day if flows are of shorter duration.

i) The "monthly average fecal coliform" bacteria is the geometric average of all samples collected during the month.

j) "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or which a relationship to absolute volume has been obtained.

k) "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to pump capabilities, water meters and batch discharge volumes.

l) "Non-contact cooling water" means the water that is contained in a leak-free system, i.e., no contact with any gas, liquid, or solid other than the container for transport; the water shall have no net poundage addition of any pollutant over intake water levels, exclusive of approved anti-fouling agents.

IV. OTHER REPORTING

1. Reporting Spills and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11. Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the Legislative rules as they pertain to the reporting of spills and accidental discharges.

2. Immediate Reporting

a) The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

b) The following shall also be reported immediately:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported immediately. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

c) The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.

d) Compliance with the requirements of IV.2 of this section, shall not relieve a person of compliance with Title 47, Series 11, Section 2.

3. Reporting Requirements

a) Planned changes. The permittee shall give notice to the Director of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 10, Title 47; or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under IV.2 of this section.

b) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c) In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Director in writing as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(A) One hundred micrograms per liter (100 ug/l);

(B) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitro phenol; and for 2-methyl 4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.9 of Series10, Title 47.

(D) The level established by the Director in accordance with Section 6.3.g of Series 10, Title 47;

(2) That any activity has occurred or will occur which would result in any discharge (on a non-routine or infrequent basis) of a toxic which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(A) Five hundred micrograms per liter (500 ug/l);

(B) One milligram per liter (1 mg/l) for antimony;

(C) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.7 of Series 10, Title 47;

(D) The level established by the Director in accordance with Section 6.3.g of Series 10, Title 47.

(3) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.

(4) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in IV.2.a). Should other applicable noncompliance reporting be required, these terms and conditions will be found in Section C of this permit.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

REQUIREMENTS:

Title 47, Series 11, Section 2 of the West Virginia Legislative Rules, Environmental Protection, Water Resources - Waste Management, Effective July 1, 1994.

RESPONSIBILITY FOR REPORTING:

Each and every person who may cause or be responsible for any spill or accidental discharge of pollutants into the waters of the State shall give immediate notification to the Division of Water and Waste Management's Emergency Notification Number, 1-800-642-3074. Such notification shall set forth insofar as possible and as soon thereafter as practical the time and place of such spill or discharge, type or types and quantity or quantities of the material or materials therein, action or actions taken to stop such spill or discharge and to minimize the polluting effect thereof, the measure or measures taken or to be taken in order to prevent a recurrence of any such spill or discharge and such additional information as may be requested by the Division of Water and Waste Management. This also applies to spills to the waters of the State resulting from accidents to common carriers by highway, rail and water.

It shall be the responsibility of each industrial establishment or other entity discharging directly to a stream to have available the following information pertaining to those substances that are employed or handled in its operation in sufficiently large amounts as to constitute a hazard in case of an accidental spill or discharge into a public stream:

(1) Potential toxicity in water to man, animals and aquatic life;
(2) Details on analytical procedures for the quantitative estimation of such substances in water and
(3) Suggestions on safeguards or other precautionary measures to nullify the toxic effects of a substance once it has gotten into a stream.

Failure to furnish such information as required by Section 14, Article 11, Chapter 22, Code of West Virginia may be punishable under Section 24, Article 11, Chapter 22, and/or Section 22, Article 11, Chapter 22, Code of West Virginia.

It shall be the responsibility of any person who causes or contributes in any way to the spill or accidental discharge of any pollutant or pollutants into State waters to immediately take any and all measures necessary to contain such spill or discharge. It shall further be the responsibility of such person to take any and all measures necessary to clean-up, remove and otherwise render such spill or discharge harmless to the waters of the State.

When the Director determines it necessary for the effective containment and abatement of spills and accidental discharges, the Director may require the person or persons responsible for such spill or discharge to monitor affected waters in a manner prescribed by the Director until the possibility of any adverse effect on the waters of the State no longer exists.

VOLUNTARY REPORTING BY LAW OFFICERS, U. S. COAST GUARD, LOCK MASTERS AND OTHERS:

In cases involving river and highway accidents where the responsible party may or may not be available to report the incident, law officers, U. S. Coast Guard, Lock Masters and other interested person(s) should make the report.

WHO TO CONTACT:
Notify the following number: **1-800-642-3074**

INFORMATION NEEDED:
- Source of spill or discharge
- Location of incident
- Time of incident
- Material spilled or discharged
- Amount spilled or discharged
- Toxicity of material spilled or discharged
- Personnel at the scene
- Actions initiated
- Shipper/Manufacturer identification
- Railcar/Truck identification number
- Container type

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this permit which you are aggrieved by to the Environmental Quality Board by filing a NOTICE OF APPEAL on the form prescribed by such Board for this purpose, with the Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after the date of receipt of the above permit.

WRD 2A-02

STATE C. EST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

Final Limita s
Year Round

FACILITY NAME: (Harpers Ferry-Bolivar WWTP) HARPERS FERRY-BOLIVAR PSD
LOCATION OF FACILITY: HARPERS FERRY, Jefferson County
PERMIT NO.: WV0039136 OUTLET NO.: 001
WASTELOAD FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity		Units	N.E.	Other Units			CEL*	Units	N.E.	Measurement Frequency	Samp Type
50050 (ML-1) RF-A Flow,In Conduit or thru plant Year Round	Reported								N/A	mgd		Continuous	measur
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	N/A					
00310 (ML-B) RF-A BOD, 5-Day 20 Deg.C Year Round	Reported			Lbs/Day					N/A	mg/l		1/month	8 hr co
	Permit Limits	75.1 Avg. Monthly	150.2 Max. Daily			N/A	30 Avg. Monthly	60 Max. Daily					
00530 (ML-A) RF-A Total Suspended Solids Year Round	Reported			Lbs/Day					N/A	mg/l		1/month	8 hr cc
	Permit Limits	75.1 Avg. Monthly	150.2 Max. Daily			N/A	30 Avg. Monthly	60 Max. Daily					
81010 (ML-K) RF-A BOD, % Removal Year Round	Reported								N/A	Percent		1/month	Calcul
	Permit Limits	N/A	N/A			N/A	85 Avg. Monthly	N/A					
81011 (ML-K) RF-A Suspended Solids, % Removal Year Round	Reported								N/A	Percent		1/month	Calcu
	Permit Limits	N/A	N/A			N/A	85 Avg. Monthly	N/A					
74055 (ML-A) RF-A Coliform, Fecal Year Round	Reported								N/A	Cnts/100m		1/month	Grab
	Permit Limits	N/A	N/A			N/A	200 Mo. Geo. Mean	400 Max. Daily					
00400 (ML-A) RF-A pH Year Round	Reported								N/A	S.U.		1/month	Grab
	Permit Limits	N/A	N/A			6 Inst. Min.	N/A	9 Inst. Max.					
00610 (ML-A) RF-A Ammonia Nitrogen Year Round	Reported			Lbs/Day					N/A	mg/l		1/month	8 hr
	Permit Limits	20.6 Avg. Monthly	41.2 Max. Daily			N/A	8.2 Avg. Monthly	16.4 Max. Daily					

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer

Title of Officer

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.

Date Completed

Signature of Principal Executive Officer or Authorized Agent

WRD 2A-

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

Final Limitations
Year Round

FACILITY NAME: (Harpers Ferry-Bolivar WWTP) HARPERS FERRY-BOLIVAR PSD
LOCATION OF FACILITY: HARPERS FERRY; Jefferson County
PERMIT NO.: WV0039136 OUTLET NO.: 001
WASTELOAD FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity				Other Units						Measurement Frequency	Sample Type
				Units	N.E.				CEL*	Units	N.E.		
00600 (ML-A) RF-B Nitrogen, Total (AS N) Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Daily Min.	N/A	mg/l		1/quarter	8 hr com
00665 (ML-A) RF-B Phosphorus, Total Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	8 hr com
50060 (ML-A) RF-A Chlorine, Total Residual Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	28 Avg. Monthly	57 Max. Daily	100	ug/l		1/month	Grab
01119 (ML-A) RF-B Copper, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
01114 (ML-A) RF-B Lead, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
01094 (ML-A) RF-B Zinc, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
00900 (ML-A) RF-B Hardness, Total (as CaCO3) Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
									N/A				

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer

Title of Officer

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.

Date Completed

Signature of Principal Executive Officer or Authorized Agent

WRD 2A-82

STATE OF W[illegible]T VIRGINIA
NATIONAL POLLUTANT DISC[illegible]RGE ELIMINATION SYSTEM
SEWAGE SLUDGE MONITORING REPORT

Final Limitation
Year Round

FACILITY NAME: (Harpers Ferry-Bolivar WWTP) HARPERS FERRY-BOLIVAR PSD
LOCATION OF FACILITY: HARPERS FERRY; Jefferson County
PERMIT NO.: WV0039136 OUTLET NO.: S01
RESULTS FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity				Other Units						Measurement Frequency	Sample Type
				Units	N.E.				CEL*	Units	N.E.		
74055 (ML-+) RF-C Coliform, Fecal Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	col/gr		1/6 months	Grab
00400 (ML-+) RF-C pH Year Round	Reported												
	Permit Limits	N/A	N/A			Rpt Only Min.	N/A	Rpt Only Max.	N/A	S.U.		1/6 months	Grab
61521 (ML-+) RF-C Arsenic, Sludge Tot. Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	20 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78476 (ML-+) RF-C Cadmium,Sludge,Tot Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	39 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78473 (ML-+) RF-C Chromium, Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	1000 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78475 (ML-+) RF-C Copper,Sludge,Tot,Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	1500 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78468 (ML-+) RF-C Lead, Dry. Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	250 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78471 (ML-+) RF-C Mercury, Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	10 Max.	N/A	mg/kg		1/6 months	1/wk Comp

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer

Title of Officer

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Date Completed

Signature of Principal Executive Officer or Authorized Agent

WRD 2A-82

STATE OF W VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SEWAGE SLUDGE MONITORING REPORT

Final Limitations
Year Round

FACILITY NAME: (Harpers Ferry-Bolivar WWTP) HARPERS FERRY-BOLIVAR PSD
LOCATION OF FACILITY: HARPERS FERRY; Jefferson County
PERMIT NO.: WV0039136 OUTLET NO.: S01
RESULTS FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity				Other Units						Measurement Frequency	Sample Type
				Units	N.E.				CEL*	Units	N.E.		
78465 (ML-+) RF-C Molybdenum,Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	18 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78469 (ML-+) RF-C Nickel, Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	200 Max.	N/A	mg/kg		1/6 months	1/wk Comp
49031 (ML-+) RF-C Selenium,Sludge,Tot. Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	36 Max.	N/A	mg/kg		1/6 months	1/wk Comp
78467 (ML-+) RF-D Zinc, Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	2800 Max.	N/A	mg/kg		1/6 months	1/wk Comp
00916 (ML-+) RF-C Calcium, Total (as Ca) Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp
61553 (ML-+) RF-C Solids, Total Sludge Percent Year Round	Reported												
	Permit Limits	N/A	N/A			Rpt Only Min.	Rpt Only Avg.	Rpt Only Max.	N/A	Percent		1/6 months	1/wk Comp
78472 (ML-+) RF-C Potassium, Sludge Tot. Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp
78478 (ML-+) RF-C Phosphorus,Sludge,Tot,Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer	I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.	Date Completed
Title of Officer		Signature of Principal Executive Officer or Authorized Agent

WRD 2A-82

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
SEWAGE SLUDGE MONITORING REPORT

Final Limitations
Year Round

FACILITY NAME: (Harpers Ferry-Bolivar WWTP) HARPERS FERRY-BOLIVAR PSD
LOCATION OF FACILITY: HARPERS FERRY; Jefferson County
PERMIT NO.: WV0039136 OUTLET NO.: S01
RESULTS FOR THE MONTH OF:

CERTIFIED LABORATORY NAME:
CERTIFIED LABORATORY ADDRESS:
INDIVIDUAL PERFORMING ANALYSIS:

Parameter		Quantity				Other Units						Measurement Frequency	Sample Type
				Units	N.E.				CEL*	Units	N.E.		
82294 (ML-+) RF-C Nitrogen, Ammonia Tot. Dry Wt. Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp
78470 (ML-+) RF-C Nitrogen, Sludge Tot. Dry Wt Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp
51020 (ML-+) RF-C Organic Nitrogen Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp
00927 (ML-+) RF-C Magnesium,Tot (as Mg) Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	N/A	Rpt Only Max.	N/A	mg/kg		1/6 months	1/wk Comp
									N/A				
									N/A				
									N/A				
									N/A				

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer

Title of Officer

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.

Date Completed

Signature of Principal Executive Officer or Authorized Agent

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/10/2009

PRODUCER (304)375-4900 FAX (304)375-5843
Bill Bailey Insurance Agency
70 ighland Avenue
P. . 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 Harpers Ferry-Bolivar PSD
DBA: Jim Williams
PO Box 235
Harpers Ferry, WV 25425

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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC	SP9153866-01	03/31/2009	03/31/2010	EACH OCCURRENCE	$ 1,000,00
						DAMAGE TO RENTED PREMISES (Ea occurence)	$ 1,000,00
						MED EXP (Any one person)	$ 5,00
						PERSONAL & ADV INJURY	$ 1,000,00
						GENERAL AGGREGATE	$ 3,000,00
						PRODUCTS - COMP/OP AGG	$ 3,000,00
		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	$
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
A		EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [ ] RETENTION $	SX9251361-01	03/31/2009	03/31/2010	EACH OCCURRENCE	$ 1,000,00
						AGGREGATE	$ 1,000,00
							$
							$
							$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				[ ] W/C STATU-TORY LIMITS [ ] OTH-ER	
						E.L. EACH ACCIDENT	$
						E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The certificate holder listed below is named as Additional Insured in regards to work being performed at the Harpers Ferry National Park by the named insured.

CERTIFICATE HOLDER

USA National Park Service
National Capital Region
1100 Ohio Drive SW
Washington , DC 20242

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 Rene D Shotwell

©ACORD CORPORATION 1988

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

March 10, 2009

Mr. Raymond Biller, Chairman
Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

RE: Harpers Ferry-Bolivar PSD
C-544429

Dear Chairman Biller:

You are hereby authorized to advertise for bids. Please refer to our approval letter on the plans and specifications regarding any technical requirements to be met prior to opening bids.

You are reminded that you are required to take affirmative steps to assure that disadvantaged business enterprises are used when possible.

The project should, as a minimum, be posted in newspapers as a Class II legal advertisement not less than 30 days prior to the date on which bids are to be received.

When the project is advertised the following statements must appear in the advertisement for bids:

"DBE REQUIREMENTS

Each bidder must fully comply with the Disadvantaged Business Enterprises, and Affirmative Action requirements, as identified in the contract documents.

The Bidder agrees to make "positive efforts" to subcontract a portion of the total value of the contract to Disadvantaged Business Enterprises. This shall be done

MAR. 13 2008 11:46AM P1 FAX NO. : 304 535 2524 HARPERS FERRY / BOLIVAR PSD

in compliance with the six (6) good faith efforts as outlined in 40 CFR 33.301. Failure to demonstrate positive efforts to do so may lead to rejection of bids. For the purpose of this program, the term "subcontract" includes all construction, modification, and service work contracted for by the bidder in the execution of the work under this contract.

NONDISCRIMINATION IN EMPLOYMENT

Bidders on this work will be required to comply with the President's Executive Order No. 11246. The requirements for bidders and contractors under this order are explained in the specifications."

In addition, the following agencies must be supplied with a copy of the legal advertisement for your project for distribution:

Small Business Administration
405 Capitol Street, Suite 412
Charleston, West Virginia 25301

OR

Small Business Administration
320 West Pike, Suite 330
Clarksburg, West Virginia 26301

Enclosed is a copy of the SRF "Application for a Construction Loan". This completed application must be submitted to our office no later than 10 calendar days after the receipt of bids in order to allow sufficient time for review approval and processing.

Should you have any questions in the interim, please contact John Tingley at (304) 926-0499 extension #1603 or John.L.Tingley@wv.gov

Sincerely,

Mike Johnson

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

MJ/jt

Enclosure

Cc: Ms. Samme Gee, Jackson & Kelly
Alpha Associates, Inc.

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

October 15, 2008

Mr. Jimmy Williams, General Manager
Harpers Ferry - Bolivar PSD
P. O. Box 235
Harpers Ferry, WV 25425

RE: Harpers Ferry - Bolivar
Public Service District
SRF No. C-544429

Dear Mr. Williams:

The plans and specifications for the above referenced project are hereby approved.

This approval DOES NOT constitute authority to advertise for bids. You will be advised by separate letter from this agency as to when such an advertisement can be initiated.

Please be advised it will be necessary to issue an addendum to the contract documents prior to opening of bids to include the current minimum prevailing wages, as promulgated by the WV Division of Labor. This and all addenda and revisions to the contract documents must be telefaxed to this office for approval and issued to plan holders five (5) days prior to bid opening. Failure to submit addenda in a timely manner will automatically nullify approval to open bids. Any addenda issued inside the five (5) day period prior to the bid opening must include an automatic extension to the bid opening date of a minimum of seven (7) days.

If any questions arise, please contact Jason Billups, P. E. at (304) 926-0499, ext. 1590.

Sincerely,

Scott G. Mandirola
Acting Director

SGM/jb
cc: Richard Klein, P. E., Alpha Associates

Harpers Ferry-Bolivar Public Service District

Resolution

A Resolution authorizing the construction and acquisition of certain sewage facilities of the Harpers Ferry-Bolivar Public Service District, Jefferson County, West Virginia, and the financing of the cost, not otherwise provided, thereof through the issuance by the District of not more than $485,000 in principal amount of Sewer Revenue Bonds, Series 1978; providing for the rights and remedies of and security for the holders of such Sewer Revenue Bonds, Series 1978; authorizing the sale of such bonds to the West Virginia Water Development Authority pursuant to the terms of a loan agreement between the District and said Authority and adopting other provisions relating thereto.

Be It Resolved by the Board of the Harpers Ferry-Bolivar Public Service District, Jefferson County, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority of this Resolution. This Resolution is adopted pursuant to the provisions of Article 13A of Chapter 16 of the Code of West Virginia of 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. Harpers Ferry-Bolivar Public Service District (the "District") was established by order of the County Commission of Jefferson County, West Virginia, dated June 29, 1972.

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the District that there be constructed certain sewer facilities (the "Project") in the District, which along with the sewer facilities previously acquired or constructed by the District, if any,

Copy

shall constitute public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the "System") at an estimated cost of $4,298,214 in accordance with the plans and specifications prepared by Betz-Converse-Murdoch, Inc., Consulting Engineers, Vienna, Virginia, which plans and specifications have heretofore been filed in the office of the District.

C. The estimated revenues to be derived in each year after the adoption of this Resolution from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds authorized to be issued pursuant to this Resolution and all Sinking Fund, Reserve Account and other payments provided for in this Resolution.

D. It is deemed necessary for the District to issue its Sewer Revenue Bonds in the principal amount of not more than $485,000 to finance costs of the construction and acquisition of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon the Bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

E. It is in the best interests of the District that its Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement to be entered into between the District and the Authority (the form of which agreement is attached to this Resolution as Exhibit A, which Exhibit, by this reference, is incorporated herein and made a part hereof) (the "Loan Agreement").

Copy

Section 1.03. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the District and such Bondholders, and the covenants and agreements herein set forth to be performed by said District shall be for the equal benefit, protection and security of the legal holders of any and all of such Bonds issued hereunder, and the coupons attached thereto, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and the coupons thereon and any other Bonds and the coupons thereon 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 in this Resolution unless the context expressly requires otherwise:

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

B. "Authority" shall mean the West Virginia Water Development Authority, which shall be the original purchaser of the Bonds authorized to be issued hereunder, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

C. "Board" shall mean the Public Service Board of the District which is the governing body of the District pursuant to the Act.

D. "Bonds" shall mean not in excess of the $485,000 Sewer Revenue Bonds, Series 1978, originally authorized to be issued pursuant to this Resolution, and any pari passu additional bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution, and the interest coupons to said Bonds.

E. "Bondholder" or "Holder of the Bonds" or any similar term shall mean any person who shall be the bearer or owner of any outstanding Bond or Bonds registered to bearer or not registered, or the registered owner of any outstanding Bond or Bonds which shall at the time be registered other than to the bearer or of any coupons representing interest accrued or to accrue on said Bonds.

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F. "Chairman" shall mean the Chairman of the Board.

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

H. "Consulting Engineers" shall mean Betz-Converse-Murdoch, Inc. consulting engineers, Vienna, Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the District as Consulting Engineers for the System.

I. "Cost of Works" shall mean those costs described in Section 1.02(D) hereof to be a part of the cost of construction and acquisition of the Project.

J. "District" shall mean the Harpers Ferry-Bolivar Public Service District, Jefferson County, West Virginia, and where appropriate the Board thereof.

K. "Fiscal Year" shall mean each twelve-month period beginning on July 1 and ending on the succeeding June 30.

L. "Independent Certified Public Accountants" shall mean the certified public accountant or firm of certified public accountants that is now or shall at any time hereafter be retained by the District 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.

M. "Net Revenues" shall mean the balance of the Gross Revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

N. "Operating Expenses," unless qualified, shall mean the current expenses, paid or accrued, of repair, operation and maintenance of the System and includes, without limiting the generality of the foregoing, insurance premiums, supplies, labor, wages, the cost of materials and supplies used for current operations, administrative expenses of the Board relating and chargeable to the System and such

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other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting practices.

O. "Project" shall mean the sewer facilities described in Exhibit B attached hereto.

P. "Revenues" or "Gross Revenues" shall mean all rates, rents, fees, charges or other income (including, without limitation, sale proceeds and interest or other income derived from the investment of the funds and accounts established hereunder) received by or accrued to the District from the operation of the System, as calculated in accordance with generally accepted accounting practices.

Q. "Secretary" shall mean the Secretary of the Board.

R. "Supplemental Resolution" shall mean any resolution which is amendatory or supplemental hereto.

S. "System" shall mean the complete public service properties of the District for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, in its entirety or any integral part thereof, and shall include any additions, betterments and improvements thereto hereafter constructed or acquired for said system from any sources whatsoever.

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

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition. There is hereby authorized the construction and acquisition of the Project described in Exhibit B hereto, plans and specifications for which have been prepared by the Consulting Engineers, and heretofore filed in the office of the Board. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V of this Resolution.

Copy

ARTICLE III

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

3.01. Authorization and Terms of Bonds. For the purpose of financing the cost of construction and acquisition of the Project, there shall be issued negotiable Sewer Revenue Bonds, Series 1978, of the District, in the aggregate principal amount of not in excess of $485,000. Said Bonds shall be designated "Sewer Revenue Bonds, Series 1978"; and shall bear interest at such rate or rates, not exceeding eight per centum (8%) per annum, and shall mature as the District shall prescribe in the Supplemental Resolution. Interest on the Bonds shall be payable semiannually on April 1 and October 1 in each year, commencing April 1, 1979. The Bonds shall be payable as to both principal and interest at the office of the Commission or through a paying agent or agents selected by the original purchaser or purchasers thereof, in any coin or currency that is legal tender for the payment of public or private debts under the laws of the United States of America. The Bonds shall be redeemable in whole or in part in inverse order of maturities (by lot if less than all the Bonds of the same maturity) only on or after the date on which all outstanding bonds issued by the Authority to provide funds for the purchase of the Bonds are redeemable and at a price equal to the aggregate of (i) the corresponding principal amount of the Authority's bonds to be redeemed by the Authority as a consequence of the District's redemption of all or a part of its Bonds outstanding, (ii) the interest to accrue on the Authority's bonds so to be redeemed to the next redemption date thereof and not previously paid, (iii) the applicable premium, if any, payable on the Authority's bonds so to be redeemed, (iv) the applicable premium, if any, payable on additional bonds of the Authority which also become redeemable by virtue of such redemption, (v) the costs and expenses of the Authority in effecting redemption of the Authority's bonds so to be redeemed, and (vi) at the direction of the Authority, an amount equal to the proportionate amount of the additional bonds of the Authority so to be redeemed, if any, less other moneys of the Authority available therefor; provided, however, that in the event the Authority's bonds have been refunded and the refunding bonds were issued by the Authority in a principal amount in excess of or less than such Bonds remaining unpaid at the date of issuance of such refunding

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bonds, the District shall be obligated to pay under item (i) above the principal amount of such refunding bonds outstanding, and, in the event the interest the Authority is required to pay on said refunding bonds is less than the Authority was required to pay on its bonds, the District shall be obligated to pay under item (ii) above the amount of interest to accrue on such outstanding refunding bonds of the Authority.

The Bonds shall be issued in the form of coupon Bonds, registrable as to principal only, or in the form of one fully registered Bond with payment record attached (the "Registered Bond").

Coupon Bonds shall be in the denomination of $5,000 each and shall be dated as of the date which is six months preceeding the first interest payment date specified above. Coupon Bonds shall bear interest from their date, payable in accordance with, and upon surrender of, the appurtenant interest coupons as they severally mature. The Registered Bond shall be dated as of the date of its delivery to the original purchaser thereof and shall bear interest from such date.

Except as otherwise provided in Section 3.04, before the delivery of any coupon Bonds, all matured coupons thereto attached, except matured coupons for which payment in full has not been provided, shall be cut off, cancelled and destroyed; provided, however, that if coupon Bonds are issued in exchange for the Registered Bond upon which interest is in default, as shown by the records of the Treasurer of the State, such coupon Bonds shall have attached thereto all coupons maturing after the date to which interest has been paid in full, as shown by such records, and in case any interest installments shall have been paid in part, appropriate notation shall be made on the coupons to evidence such fact.

Section 3.02. Execution of Bonds and Coupons. Said Bonds shall be executed in the name of the District by the Chairman, and the seal of the District shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the District before the Bonds so signed and sealed have been actually

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sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the District by such person as at the actual time of the execution of such Bonds shall hold the proper office in the District, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

The coupons to be attached to the Bonds shall be authenticated with the facsimile signature of the present or future Chairman and Secretary of the District, and the District may adopt and use for this purpose a facsimile seal.

Section 3.03. Negotiability, Transfer and Registration. The 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 any of said Bonds or the coupons appertaining thereto, 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 in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain outstanding, the Treasurer of the State of West Virginia shall keep and maintain books for the registration and transfer of the Bonds. Coupon Bonds may be registered at the option of the Holder as to principal only at the office of the Treasurer of the State of West Virginia, such registration to be noted on the back of said Bonds in the space provided therefor. After such registration as to principal only, no transfer of the Bonds shall be valid unless made at said office by the registered owner, or by his duly authorized agent or representative, and similarly noted on the Bonds, but the Bonds may be discharged from registration by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. At the option of the Holder the Bonds may thereafter again from time to time be registered

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or transferred as before. Such registration as to principal only shall not affect the negotiability of the coupons, which shall continue to pass by delivery.

The Registered Bond shall be transferable only upon the books of the District, which shall be kept for the purpose at the office of the aforesaid Treasurer, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Treasurer of the State duly executed by the registered owner or his duly authorized attorney. Upon transfer of the Registered Bond, there shall be issued in the name of the transferee, coupon Bonds, with appropriate coupons attached, of the same aggregate principal amount equal to the unpaid principal amount of the Registered Bond, and having maturities corresponding to the principal installments of such Registered Bond then unpaid.

In all cases in which the privilege of exchanging Bonds or transferring the Registered Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds and coupons surrendered in any such exchanges or transfers shall forthwith be cancelled by the said Treasurer. For every such exchange or transfer of Bonds, the Treasurer 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 coupon Bond upon each exchange or transfer, and any other expenses of the said Treasurer incurred in connection therewith, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer; provided, however, that in the event the Authority is the Bondholder requesting such exchange or transfer, the District shall pay all such taxes, fees, governmental charges or other expenses incurred in making such exchange or transfer. The Treasurer shall not be obliged to make any such exchange or transfer of Bonds during the ten (10) days 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.

Section 3.04. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be

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destroyed, stolen or lost, the District may in its discretion issue and deliver a new Bond with all unmatured coupons, if any, so mutilated, destroyed, stolen or lost in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond, and attached coupons, if any, or in lieu of and substitution for the Bond and coupons, if any, destroyed, stolen or lost and upon the Holder's furnishing the District proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the District may prescribe and paying such expenses as the District may incur. All Bonds and coupons so surrendered shall be cancelled by the Secretary and held for the account of the District. If such Bond or coupons shall have matured or be about to mature, instead of issuing a substitute Bond or coupon, the District may pay the same, upon being indemnified as aforesaid, and if such Bond or coupons be lost, stolen, or destroyed, without surrender therefor.

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

Section 3.05. Form of Bonds and Coupons. The text of the Bonds, and of the coupons, shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution, or any subsequent resolution or ordinance adopted prior to the issuance thereof.

[Form of Coupon Bonds]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF JEFFERSON
HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 1978

No._____ $5,000.00

KNOW ALL MEN BY THESE PRESENTS: That THE HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, a public corporation, organized and existing under the laws of the State of West

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Virginia (the "District"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the bearer or, if this Bond be registered as to principal to the registered holder hereof, on the first day of October, ____, the sum of Five Thousand Dollars ($5,000.00) and solely from such special funds also to pay interest on said sum from the date hereof at the rate of _____ per centum (_____%) per annum semiannually, on the first day of April and the first day of October in each year beginning April 1, 1979, all such interest as may accrue on and prior to the maturity date hereof to be payable only upon presentation and surrender of the annexed coupons as they severally become due, both principal of, and interest on, this Bond being payable in any coin or currency which, on the respective dates of payment of principal and interest, 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, or at the option of the holder at the _____. This Bond is subject to redemption prior to its stated date of maturity as follows: in whole or in part in inverse order of maturities (by lot if less than all the Bonds of the same maturity) only on or after the date on which all outstanding bonds issued by the Authority to provide funds for the purchase of the Bonds of the issue of which this Bond is one are redeemable and at a price equal to the aggregate of (i) the corresponding principal amount of the Authority's bonds to be redeemed by the Authority as a consequence of the District's redemption of all or a part of its Bonds outstanding, (ii) the interest to accrue on the Authority's bonds so to be redeemed to the next redemption date thereof and not previously paid, (iii) the applicable premium, if any, payable on the Authority's bonds so to be redeemed, (iv) the applicable premium, if any, payable on additional bonds of the Authority which also become redeemable by virtue of such redemption, (v) the costs and expenses of the Authority in effecting redemption of the Authority's bonds so to be redeemed, and (vi) at the direction of the Authority, an amount equal to the proportionate amount of the additional bonds of the Authority so to be redeemed, if any, less other moneys of the Authority available therefor; provided, however, that in the event the Authority's bonds have been refunded and the refunding bonds were issued

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by the Authority in a principal amount in excess of or less than such bonds remaining unpaid at the date of issuance of such refunding bonds, the District shall be obligated to pay under item (i) above the principal amount of such refunding bonds outstanding, and, in the event the interest the Authority is required to pay on said refunding bonds is less than the Authority was required to pay on its bonds, the District shall be obligated to pay under item (ii) above the amount of interest to accrue on such outstanding refunding bonds of the Authority.

This Bond is one of an authorized issue of Bonds, in the aggregate principal amount of $_____, of like date and of like tenor and effect, except as to principal amount, number, date of maturity, and interest rate, issued to finance the cost of construction and acquisition of certain public service facilities of the District for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes in the District (the "System"), under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a Resolution duly adopted by the Board of the District on the _____ day of November, 1978 (the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

The Bonds authorized by said Resolution are payable only from and secured by the net revenues to be derived from the operation of the sewage system of the District, which net revenues shall be sufficient to pay the principal of, and interest on, all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations, nor shall said District be obligated to pay the same or the interest thereon except from said special fund provided from the net revenues from the operation of said System. By the Resolution, the District has covenanted and agreed to establish and maintain just and equitable rates or charges for the use

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of such System and the services rendered thereby, which shall be sufficient to provide gross revenues which will be able to pay for the reasonable expenses of operation, repair and maintenance of said System and leave a balance each year equal to at least 130% of the amount required during such year to pay the maximum amount due in any ensuing year of principal of and interest on all obligations payable from such revenues. The District has entered into certain further covenants with the holders of the Bonds for the terms of which reference is made to said Resolution. Remedies provided the holders of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is fully negotiable but may be registered as to principal only in the name of the holder on the books in the office of the Treasurer of the State of West Virginia, at Charleston, West Virginia, such registration to be evidenced by notation on the back hereof by the Treasurer, after which no transfer shall be valid unless made on said books and similarly noted hereon, but it may be discharged from such registration by being transferred to bearer, after which it shall be transferable by delivery, but it may be registered again as before. The registration of this Bond as to principal shall not restrain the negotiability of the coupons by delivery merely.

This Bond shall be exempt from all taxation by the State of West Virginia and any county or municipality therein.

All money received from the sale of this Bond or other Bonds of the issue of which this Bond is one, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the cost of additions, betterments and improvements described in the Resolution, including payment of any indebtedness incurred by the District for such purposes which is required to be paid from the moneys received from the sale of such Bonds, or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holder or holders of said Bonds.

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

All provisions of the 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, the said The District has caused this Bond to be signed by the Chairman of the Board, attested by its Secretary and its corporate seal to be hereunto affixed, and the coupons hereto attached to be executed with the facsimile signatures of said Chairman and Secretary, which officials by the execution of this Bond do adopt as their own proper signatures their facsimile signatures appearing on said coupons, and this Bond, all as of the first day of October, 1978.

_____
Chairman

ATTEST:

_____
Secretary

(FORM OF COUPON)

No. _____ $_____

On the first day of _____, 19__, The Harpers Ferry-Bolivar Public Service District, Jefferson County, West Virginia, will pay to bearer upon presentation

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of and surrender of this coupon the sum shown hereon, out of the special fund provided therefor, at the office of the West Virginia Municipal Bond Commission or, at the option of the holder hereof, at the _____, said payment to be made in any coin or currency which on said date of payment is legal tender for the payment of public and private debts under the laws of the United States of America, as provided in, and for interest then due on, the Sewer Revenue Bond, Series 1978, dated October 1, 1978, to which this coupon is attached.

_____
Chairman

_____
Secretary

_____

(No writing on this Bond except by the Treasurer of the State of West Virginia as Registrar)

Date of Registration	In Whose Name Registered	Signature of Registrar

~~[Form of Fully Registered Bond with Payment Record]~~

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF JEFFERSON
HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 1978

No. _____ $_____

KNOW ALL MEN BY THESE PRESENTS: That THE HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, a ~~municipal~~ Public corporation, organized and existing under the laws of the State of West Virginia (the "District"), for value received, hereby promises

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to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Payee") or its registered assigns (the "Alternate Payee"), the sum of $_____, in installments on October 1 of each year as set forth below, with interest on each installment at the rate per annum set forth below opposite the year in which the installment becomes due:

Year	Installment	Interest Rate

The interest rate on each installment shall run from the original date of delivery of this Bond to the Payee and payment therefor and until payment of such installment, and such interest shall be payable on the first day of April and the first day of October in each year beginning ~~April~~ October 1, 1980. Both principal of and interest on this Bond are payable in any coin or currency which, on the respective dates of payment of principal and interest, 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, or at the option of the Payee at the _____. This Bond is subject to redemption prior to its stated date of maturity as follows: in whole or in part in inverse order of maturities only on or after the date on which all outstanding bonds issued by the Authority to provide funds for the purchase of this Bond are redeemable and at a price equal to the aggregate of (i) the corresponding principal amount of the Authority's bonds to be redeemed by the Authority as a consequence of the District's redemption of all or a part of its Bond outstanding, (ii) the interest to accrue on the Authority's bonds so to be redeemed to the next redemption date thereof and not previously paid, (iii) the applicable premium, if any, payable on the Authority's bonds so to be redeemed, (iv) the applicable premium, if any, payable on additional bonds of the Authority which also become redeemable by virtue of such redemption, (v) the costs and expenses of the Authority in effecting redemption of the Authority's bonds so to be redeemed, and (vi) at the direction of the Authority, an amount equal to the proportionate amount of the additional bonds of the Authority so to be redeemed, if any, less other moneys of the Authority available therefor; provided, however, that in the event the Authority's bonds

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have been refunded and the refunding bonds were issued by the Authority in a principal amount in excess of or less than such bonds remaining unpaid at the date of issuance of such refunding bonds, the District shall be obligated to pay under item (i) above the principal amount of such refunding bonds outstanding, and, in the event the interest the Authority is required to pay on said refunding bonds is less than the Authority was required to pay on its bonds, the District shall be obligated to pay under item (ii) above the amount of interest to accrue on such outstanding bonds of the Authority.

This Bond is issued to finance the cost of construction and acquisition of certain public service facilities of the District for the collection, treatment, purification or disposal of liquid or solid wastes in the District (the "System"), under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a Resolution duly adopted by the Board of the District on the _____ day of November, 1978 (the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

The Bonds authorized by said Resolution are payable only from and secured by the net revenues to be derived from the operation of the sewage system of the District, which net revenues shall be sufficient to pay the principal of, and interest on, all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations, nor shall said District be obligated to pay the same or the interest thereon except from said special fund provided from the net revenues from the operation of said System. By the Resolution, the District has covenanted and agreed to establish and maintain just and equitable rates or charges for the use

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of such System and the services rendered thereby, which shall be sufficient to provide gross revenues which are able to pay for the reasonable expenses of operation, repair and maintenance of said System and leave a balance each year equal to at least 130% of the amount required during such year to pay the maximum amount due in any ensuing year of principal of and interest on all obligations payable from such revenues. The District has entered into certain further covenants with the holders of the Bonds for the terms of which reference is made to said Resolution. Remedies provided the holders of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of the District kept for that purpose at the office of the Treasurer of the State of West Virginia, by the Payee, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Treasurer of the State of West Virginia, duly executed by the Payee or its attorney duly authorized in writing. Upon transfer of this Bond, there shall be issued in the name of the transferee coupon Bonds, with appropriate coupons attached, of the same aggregate principal amount equal to the unpaid principal amount of this Bond, and having maturities corresponding to the principal installments of this Bond then unpaid.

This Bond shall be exempt from all taxation by the State of West Virginia and any county or municipality therein.

All money received from the sale of this Bond or other Bonds of the issue of which this Bond is one, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the cost of additions, betterments and improvements described in the Resolution, including payment of any indebtedness incurred by the District for such purposes which is required to be paid from the moneys received from the sale of such Bonds, or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holder or holders of said Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen

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and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said District, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System of said District has been pledged to and will be set aside into said special fund by said District for the prompt payment of the principal of and interest on the Bonds.

All provisions of the 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, the said ~~The~~ Harpers Ferry-Bolivar Public Service District has caused this Bond to be signed by the Chairman of the Board, attested by its Secretary and its corporate seal to be hereunto affixed, all as of the 22nd day of April, 1980.

_____
Chairman

ATTEST:

_____
Secretary

[FORM OF PAYMENT RECORD]

PAYMENT RECORD

Due Date	Principal Payment	Principal Balance Due After Payment	Interest Payment (%)	Date Paid	Name of Paying Agent Authorized Officer And Title
	$	$	$		

SCHEDULE "A"

Principal installments on which payments have been made prior to maturity

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Date	Principal Due Amount	Principal Payment	Balance	Date Paid	Name of Paying Agent Authorized Officer and Title
	$	$	$		

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfer unto

the within Bond of the Harpers Ferry-Bolivar Public Service District, and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books of the within named Public Service District with full power of substitution in the premises.

Dated:

_____

In the presence of:

_____

3.06. Sale of Bonds; Execution of Loan Agreement with Authority. The Bonds shall be sold to the West Virginia Water Development Authority, Charleston, West Virginia, at a price not less than 96.5 percent of the aggregate principal amount thereof, pursuant to the terms and conditions of the Loan Agreement to be entered into between the District and the Authority, all of the provisions of which are hereby ratified and confirmed herein and made a part hereof. The Chairman is specifically authorized and directed to execute the Loan Agreement in substantially the form of Exhibit A, the Secretary is directed to affix the seal of the District, attest the same and deliver the Loan Agreement to the Authority.

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. System Revenues and Application Thereof. So long as any of the Bonds shall be outstanding and unpaid, the District covenants with the Holders of the Bonds as follows:

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A. Establishment of System Revenue Fund and Disposition of System Revenues. The entire gross revenues derived from the operation of the System and all parts thereof shall be deposited by the District in a special fund in a bank in the State of West Virginia which is eligible under the laws of West Virginia to receive deposits of state and municipal funds, which fund (herein called the "Revenue Fund") is hereby established. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the District and used only for the purposes and in the manner herein provided. All revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The District shall first each month, from the moneys in the Revenue Fund, pay all reasonable operating expenses of the System.

(2) Thereafter, from the moneys in the Revenue Fund, the District shall, on the first day of each month commencing with and including the month of _____, 19__, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in a fund to be known as the "Sinking Fund," which is hereby created and established, a sum equal to one-sixth (1/6) of the amount of interest which will become due on said Bonds on the next ensuing semiannual interest payment date: Provided, however, that in the event that the period to elapse between said initial payment date and the next semiannual interest payment date is less than six (6) months, then such monthly payments shall be increased proportionately to provide the required amount of interest maturing on the next semiannual interest payment date.

The District shall also, from the Revenue Fund, remit to the Commission, on such dates or at such other times as the Commission shall require, such additional sums as shall be necessary to pay the fiscal agency charges due for paying the Bonds and the interest thereon.

The District shall also apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in said Sinking Fund, on the first day of each

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month, beginning on the first day of that month which is twelve (12) months prior to the first principal payment date of said Bonds, a sum equal to one-twelfth (1/12) of the amount of principal which will mature and become due on said Bonds on the next ensuing principal payment date.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Commission from said Revenue Fund and from the proceeds of the sale of the Bonds as provided in Article V hereof by the District at the times provided herein.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due.

The District shall next, from the Revenue Fund, remit to the Commission for deposit in a Reserve Account in said Sinking Fund, on the first day of each month of each year, beginning with and including the month in which payments from the Revenue Fund for semiannual interest are commenced, an amount equal to twenty per centum (20%) of all amounts required to be deposited for maturing principal and interest into said Sinking Fund, as provided above, on said dates: Provided, however, that no further payments shall be made into said Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the maximum amount of principal and interest that will mature and become due on said Bonds in any succeeding fiscal year.

Moneys in the Reserve Account shall be used only for the purpose of payment of maturing principal of or interest on the Bonds when other moneys in the Sinking Fund are insufficient therefor and for no other purpose.

Any withdrawals from the Reserve Account shall be subsequently restored from the first revenue available after all required payments to the Sinking Fund and Reserve Account, including any deficiencies for prior payments, have been made in full.

The District shall not be required to make any further payments into said Sinking Fund or into the Reserve Account in said Sinking Fund when the aggregate

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amount of funds in both said Sinking Fund and said Reserve Account are at least equal to the aggregate principal amount of Bonds issued pursuant to this Resolution then outstanding, plus the amount of interest due or thereafter to become due on said Bonds then outstanding.

As and when additional bonds ranking on a parity with the Bonds herein authorized are issued, provision shall be made for additional payments into said 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 Reserve Account in said Sinking Fund in an amount equal to the maximum provided and required to be paid into the Sinking Fund in any calendar year for account of all the Bonds, including such additional bonds which by their terms are payable from said Sinking Fund.

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

Said Sinking Fund shall be used solely and only and is hereby pledged for the purpose of servicing the Bonds and any additional bonds ranking on a parity therewith that may be issued and outstanding under the conditions and restrictions hereinafter set forth.

(3) Thereafter, from the moneys remaining in said Revenue Fund, the District shall next, on the first day of each month commencing with the first month in which interest shall be first payable from the Revenue Fund, remit to a bank which is eligible under the laws of West Virginia to receive deposits of public funds for deposit in a special account to be designated "Renewal and Replacement Fund," which account is hereby established and created, a sum equal to two and one-half per centum (2-1/2%) of the gross revenues each month, exclusive of any payments for account of the Reserve Account in the Sinking Fund. All funds in said Renewal and Replacement Fund shall be kept apart from all other municipal funds, and all or any part of said fund may be invested in

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bonds or other direct or fully guaranteed obligations of the United States of America maturing or being subject to retirement at the option of the holder within not more than ten (10) years from the date of such investment. Withdrawals and disbursements may be made from said Renewal and Replacement Fund for replacements, emergency repairs, additions, betterments or improvements to the System; provided, however, that any deficiency in the Reserve Account (except to the extent such deficiency exists because the required payments into such Account have not as of the date of determination of a deficiency funded such Account to the maximum extent required by Section 4.01(A)(2)), shall be promptly eliminated with moneys from the Renewal and Replacement Fund in amounts sufficient to eliminate such deficiency.

(4) Whenever all of the required and provided transfers and payments from said Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid for operating expenses and into the Sinking Fund and the Renewal and Replacement Fund during the next succeeding three (3) months, such excess shall be considered as surplus revenues. Said surplus revenues shall be first used for the construction and acquisition of improvements and extensions to the System, and, thereafter, to the extent not needed for such purposes, said surplus revenues and any surplus moneys in the Sinking Fund, exclusive of the Reserve Account, in excess of the amount of interest to become due on the next interest payment date and the amount of principal to become due within the next succeeding twelve (12) months, may be used to purchase Bonds upon the open market at a price not exceeding the par value thereof plus three per centum (3%) of such par value, or to redeem Bonds at a price not in excess of the redemption price thereof, or for debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such additions, betterments or improvements.

(5) The moneys in excess of the sum insured by the maximum amounts insured by the Federal Deposit Insurance Corporation in the Revenue Fund and for the Renewal and Replacement Fund (unless remitted to the Commission) shall at all times be secured, to the full extent thereof in

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excess of such insured sum, by direct obligations of the United States of America or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State of West Virginia.

(6) If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds on the subsequent payment dates.

(7) Moneys in the Reserve Account shall be invested and reinvested by the Commission in direct obligations of the United States of America having maturities not longer than five (5) years from the date of purchase.

(8) All remittances made by the District to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

ARTICLE V

APPLICATION OF BOND PROCEEDS

Section 5.01. Construction Trust Fund. From the moneys received from the sale of any or all of the Bonds authorized and issued pursuant to this Resolution, the following amounts shall be first deducted and deposited:

A. All accrued interest received from the purchaser of said Bonds shall be deposited in the Sinking Fund and used to pay the next maturing interest on the Bonds.

B. The remaining moneys derived from the sale of said Bonds shall be deposited by the District in a special bank account in a fund to be known as the "Construction Trust Fund," which is hereby created, which fund shall be kept separate and apart from all other funds of the District and shall be drawn out, used and applied by the District solely for the payments of the cost of the construction and acquisition of the Project, and purposes incidental thereto, and for no other purposes whatsoever. The moneys in said fund shall be secured at all times by the deposit of such bonds in direct obligations of the United States of America having a fair market value at least equal to the balance in excess of $100,000 in said fund. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to, such purposes, then such unapplied proceeds shall be deposited by the District in the Sinking Fund established

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pursuant to this Resolution and shall be used only as provided herein. All such proceeds shall be and constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the Holders of the Bonds herein authorized.

Expenditures or disbursements from said Construction Trust Fund, except for legal, fiscal and engineering expenses and expenses in connection with the issuance and sale of the Bonds shall be made only after such expenditures or disbursements shall have been approved in writing by the Consulting Engineers.

ARTICLE VI

ADDITIONAL COVENANTS OF THE DISTRICT

Section 6.01. General Covenants of the District. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the District and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of said Bonds. In addition to the other covenants, agreements and provisions of this Resolution, the District hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon are outstanding and unpaid.

Section 6.02. Bonds Not To Be Indebtedness of the District. Neither the Bonds nor coupons appertaining thereto shall be or constitute an indebtedness of the District within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues of the System, as herein provided.

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the net revenues derived from the operation of the System, to the extent necessary to make the payments required under Section 4.01 of this Resolution. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the Sinking Fund, including the

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Reserve Account therein, and all other payments provided for in this Resolution are hereby irrevocably pledged, in the manner provided in this Resolution, to the payment of the principal of and interest on the Bonds herein authorized as the same become due, and for the other purposes provided in this Resolution.

Section 6.04. Rates. Prior to the issuance of the Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file in the office of the Board, each of which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce gross revenues from said System 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 District hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient to provide gross revenues which will be able to pay for all reasonable expenses of operation, repair and maintenance of the System and leave a balance each year equal to at least 130% of the maximum amount required in any ensuing year to pay the interest and principal as the same becomes due and accomplish retirement of all obligations for the payment of which such revenues have or shall have been pledged, charged or otherwise encumbered.

Section 6.05. Completion, Operation and Maintenance. The District will use its best efforts to expeditiously complete and maintain in good condition said System and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in this Resolution.

Section 6.06. Sale of the System. The System may not be sold, mortgaged, leased or otherwise disposed of

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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. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Sinking Fund, and, in the event the Authority is no longer a Bondholder, the District shall direct the Commission to apply such proceeds to the payment of principal and interest at maturity of Bonds about to mature. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the District by the Commission unless necessary for the payment of other obligations of the District payable out of the revenues of the System.

The foregoing provision notwithstanding, unless otherwise prohibited by law, the District 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 is not in excess of Ten Thousand Dollars ($10,000), the Board shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof. 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 shall be in excess of Ten Thousand Dollars ($10,000) but not in excess of Fifty Thousand Dollars ($50,000), the Board shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and then authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, in excess of $10,000 and not in excess of $50,000, shall be remitted by the District to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then outstanding at prices not greater than the par value thereof plus three per centum (3%) of such par value. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Resolution.

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No sale, lease or other disposition of the properties of the System shall be made by the District if the proceeds to be derived therefrom shall be in excess of $50,000 and insufficient to pay all the Bonds then outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of sixty-six and two-thirds per centum (66-2/3%) in amount of Bonds then outstanding. The District 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 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The District shall not issue any other obligations whatsoever, except pari passu additional bonds provided for in Section 6.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; and all obligations hereafter issued by the District 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 Bonds; provided, however, that no such subordinate obligations shall be issued unless the Reserve Account in the Sinking Fund is funded to the extent that no further payments are required thereto as provided in Section 4.01(A)(2).

The District 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 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Resolution, or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. No additional parity bonds, as in this section defined, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to the Resolution, except under the conditions and in the manner herein provided.

No such additional parity bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of additions, betterments and improvements

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to the System or refunding the entirety of one or more series of Bonds issued pursuant hereto, or both such purposes.

No such additional parity bonds shall be issued at any time, however, unless and until there has been procured and filed with the Board a written statement by a certified public accountant not in the regular employ of the District, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any twelve (12) consecutive months, within the eighteen (18) months immediately preceding the date of the actual issuance of such additional parity bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional parity bonds, shall not be less than one hundred thirty per centum (130%) of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the following:

(1) The Bonds originally issued pursuant to the Resolution then outstanding;

(2) Any additional parity bonds theretofore issued pursuant to the provisions contained in the Resolution then outstanding; and

(3) The additional parity bonds then proposed to be issued.

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from (a) the improvements to be financed by such additional parity bonds and (b) any increase in rates approved by the Public Service Commission of West Virginia prior to the date of delivery of such additional parity bonds and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Board prior to the issuance of such additional parity bonds.

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The net revenues actually derived from the System during the twelve-consecutive-month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineers and the said certified public accountant as stated in a certificate jointly made and signed by the Consulting Engineers and said certified public accountant, on account of increased rates, rentals, fees and charges for the System approved by the Public Service Commission of West Virginia prior to issuance of such additional parity bonds.

Not later than simultaneously with the delivery of such additional parity bonds, the District shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements to the System that are to be financed by such additional parity bonds.

The term "additional parity bonds," as used in this section, shall be deemed to mean additional bonds issued under the provisions and within the limitations of this section, payable from the revenues of the System on a parity with the Sewer Revenue Bonds, Series 1978, and all the covenants and other provisions of the Resolution (except as to details of such additional parity bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Sewer Revenue Bonds, Series 1978, and the holders of any additional parity bonds subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any bond or coupon over any other. The Commission shall comply fully with all the increased payments into the various funds created in the Resolution required for and on account of such additional bonds, in addition to the payments required for Bonds theretofore issued pursuant to the Resolution.

All additional parity bonds shall mature on October 1 of the years of maturities, and the semiannual interest thereon shall be payable April 1 and October 1 of each year.

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

No additional parity bonds, as in this section defined, shall be created at any time, however, unless all the payments into the respective funds and accounts provided for in the Resolution on the Bonds then outstanding, and any other payments provided for in the Resolution, shall have been made in full as required to the date of delivery of the additional bonds and the District shall then be in full compliance with all the covenants, agreements and terms of the Resolution.

Notwithstanding any of the foregoing provisions, with the written consent in advance of the Authority and upon compliance with the terms, limitations and conditions contained in the Resolution, pari passu additional Bonds may be authorized and issued by the District pursuant to supplemental resolution solely to complete the Project in accordance with the plans and specifications therefor now on file with the Board in the event that the Bonds issued hereunder should be insufficient, together with other funds lawfully available therefor, to pay all costs of construction and acquisition of the Project; provided, however, that, prior to the issuance of such pari passu additional bonds under the provisions of this paragraph, the Consulting Engineers shall file with the Board a statement to the effect that additional funds are needed and are adequate for such purpose. All such pari passu additional bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project and the maturities of any such pari passu additional bonds shall be in years and amounts suggested by the Authority.

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Section 6.09. Insurance. The District will carry, with a reputable insurance carrier or carriers, such insurance as is customarily carried with respect to works and properties similar to the System, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks, which insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the buildings, properties, furniture, fixtures and equipment of the System. In time of war, the District shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be 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 said Renewal and Replacement Fund. The District will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System.

Section 6.10. Services Rendered to the District. The District will not render or cause to be rendered any free services of any nature by its System; and in the event the District or any officer or employee of the District 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 District and any such officer or employee.

Section 6.11. Remedies and Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the District under this Resolution and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds at the specified date of maturity thereof, or otherwise in the performance of any covenant contained in this Resolution other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the District of such default, any Bondholder shall, in addition to all other remedies or rights, including, but not limited to, the right of foreclosure provided in the Act, have the right by appropriate

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legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the District with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and interest coupons, the deposits into the funds and accounts hereby established as herein provided and the payment of operating expenses of the System, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Resolution and the Act.

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

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

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

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Any receiver appointed as provided herein shall hold and operate the System in the name of the District and for the joint protection and benefit of the District and Holders of Bonds issued pursuant to this Resolution. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the District and Bondholders, and the curing and making good of any default under the provisions of this Resolution, and the title to and ownership of said System shall remain in the District, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 6.12. Enforcement of Collections. The District will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such fees, rates and charges, if not paid when due, shall become a lien on the premises served by the System. When such fees, rates and charges have been delinquent for thirty (30) days, the District shall have the power to forthwith foreclose the lien on the premises served in the manner provided for the foreclosure of mortgages on real property by the laws of West Virginia.

Whenever any rates, rentals or charges for services or facilities of the System shall remain unpaid for a period of thirty days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. The District further convenants and agrees that in the event it owns a waterworks system (the "Water System"), 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 and facilities of the System and the Water System to all delinquent users of services and facilities of the System and will not restore such services of either System until all delinquent charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

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Section 6.13. No Competing Franchise. The District will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services that would compete with services provided by the System.

Section 6.14. Books and Records. The Board will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the District, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the District relating thereto.

The accounting system for the System shall follow currently accepted accounting practices and safeguards. Separate control accounting records shall be maintained by the District. 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 Board. The Board 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 Board shall be reported to such agent of the District as the Board shall direct.

The District shall file with the Consulting Engineers and the Authority, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report containing the following:

A. A statement of gross revenues, operating expenses and net revenues derived from the System.

B. A balance sheet statement showing all deposits in all the funds provided for in this Resolution and the status of all said funds.

The District shall also, at least once a year, cause the books, records and accounts of the System to be audited by a certified public accountant and shall mail upon request, and make available generally, the report of said certified

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public accountant, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Resolution and shall file said report with the Authority.

Section 6.15. Reserved.

Section 6.16. Operating Budget. The Board shall annually, at least thirty (30) days preceding the beginning of each fiscal year, prepare and adopt by resolution a detailed budget of the estimated expenditures for operation and maintenance of the System during the succeeding fiscal year. No expenditures for the operation and maintenance of the System shall be made in any fiscal year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Board shall have unanimously authorized the same. The Board shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any Bondholder who shall file his address with the Board and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Bondholder or anyone acting for and in behalf of such Bondholder.

Section 6.17. Mandatory Connections. The mandatory use of the sewer facilities of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare and the economy of the inhabitants of the District 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 and occupant of every lot, parcel and tract of land that abuts on a street, alley or other public way in which any sewer line, main or facility is located, or which is located within a reasonable distance thereof, not exceeding 300 feet, and is reasonably accessible thereto, and upon which lot, parcel or tract a building or other habitable structure has been or

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shall be erected for residential, commercial or industrial use, shall connect the waste or sewage lines of such building or structure with the facilities of the System if sewage will flow by gravity from such building or structure into the facilities of the System and shall thereupon and thereafter refrain from using and shall cease to use any other method for the disposal of sewage or water-borne waste matter and shall pay all charges, fees and rates lawfully provided for use of the sewer facilities.

Any such building or structure from which emanates sewage or water-borne waste matter and 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 District 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.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Modification or Amendment. No material modification or amendment of this Resolution or of any resolution amendatory hereof or supplemental hereto that would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the Holders of two-thirds (2/3) or more in principal amount of the Bonds then outstanding; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the District to pay such principal and interest out of the net revenues of the System without the consent of the Holder 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.

Section 7.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution.

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Section 7.03. Repeal of Conflicting Resolutions. All resolutions and orders, or parts thereof, in conflict with this Resolution are to the extent of such conflict repealed.

Section 7.04. Covenant of Due Procedure, Etc. The District covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, the Secretary and members of the Board were at all times when any actions in connection with this Resolution occurred, and are, duly in office and duly qualified for such offices.

Section 7.05. Defeasance. If the District shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds and coupons the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of any revenues, and other moneys and securities pledged under the Resolution and all convenants, agreements and other obligations of the District to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds or coupons or interest installments for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the paying agent at the same or earlier time, shall be sufficient, to pay as and when due the principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds and all coupons appertaining to such Bonds shall prior to the maturity thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission either moneys in an amount which shall be sufficient, or securities the principal of

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and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Commission at the same time, shall be sufficient, to pay when due the principal of and interest due and to become due on said Bonds on and prior to the maturity dates thereof, as the case may be. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and interest to become due on said Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the District, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only obligations of, or obligations guaranteed by, the United States of America.

Section 7.06. Restrictions as to Arbitrage Bonds. The District shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the District to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 103(c)(2) of the Internal Revenue Code, and the Chairman of the Board shall deliver his certificate, based upon this covenant, with regard thereto to the Authority.

Section 7.07. Effective Date. This Resolution shall take effect upon passage, in the manner prescribed by law; provided, however, that the Bonds shall not be delivered to the Authority until the West Virginia Public Service Commission has given its approval of the sale of the Bonds thereto.

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HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRRICT

CERTIFICATION

THE UNDERSIGNED Chairman and Secretary of the Harpers Ferry-Bolivar Public Service District hereby certify that the foregoing RESOLUTION with exhibits attached was unanimously adopted at the regular meeting of the Public Service Board on November 28, 1978, duly called, a quorum present and all members voting in favor thereof.

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

BY: _____ (SEAL)
Its Chairman

ATTEST:

_____
Secretary

(SEAL)

Copy

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

Supplemental Resolution

A RESOLUTION SUPPLEMENTING A RESOLUTION ENTITLED "A RESOLUTION AUTHORIZING THE CONSTRUCTION AND ACQUISITION OF CERTAIN SEWAGE FACILITIES OF THE HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $485,000 IN PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1978; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH SEWER REVENUE BONDS, SERIES 1978; AUTHORIZING THE SALE OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY PURSUANT TO THE TERMS OF A LOAN AGREEMENT BETWEEN THE DISTRICT AND SAID AUTHORITY AND ADOPTING OTHER PROVISIONS RELATING THERETO"; SETTING THE AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1978, TO BE ISSUED AT $485,000 AND CONFIRMING THE SALE THEREOF TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; AND ADOPTING OTHER PROVISIONS RELATING TO SUCH SEWER REVENUE BONDS, SERIES 1978.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY
FINDINGS AND DEFINITIONS

Section 1.01. Authority for This Supplemental Resolution. This Supplemental Resolution is adopted pursuant to the provisions of Article 13A of Chapter 16 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law and in accordance with a resolution adopted by the Public Service Board of Harpers Ferry-Bolivar Public Service District (the "District") on November 28, 1978, entitled "A Resolution authorizing the construction and acquisition of certain sewage facilities of the Harpers Ferry-Bolivar Public Service District, Jefferson County, West Virginia, and the financing of the cost, not otherwise provided, thereof through the issuance by the District of not more than $485,000 in principal amount of Sewer Revenue Bonds, Series 1978; providing for the rights and remedies of and security for the holders of such Sewer Revenue Bonds, Series 1978; authorizing the sale of such bonds to the West Virginia Water Development Authority pursuant to the terms of a loan agreement between the District and said Authority and adopting other provisions relating thereto" (the "Resolution")

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

A. By loan application dated March 17, 1978, as revised and supplemented, the District applied for a loan from the West Virginia Water Development Authority (the "Authority") for the purpose of financing part of the cost of construction and acquisition of certain sewer facilities in the District, which loan application was approved by the Authority.

B. On November 28, 1978, the Public Service Board of the District adopted the Resolution, authorizing the issuance of not more than $485,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1978 (the "Bonds"), and the execution of a loan agreement with the Authority.

C. The District and the Authority entered into a loan agreement dated November 28, 1978, which provided for a loan to the District by the Authority through the purchase by the Authority of $485,000 in aggregate principal amount of Bonds of the District at a price of not less than $464,478.

D. Certain terms and conditions of the issuance and sale to the Authority of the District's Bonds were dependent upon the terms and conditions of the sale of the Authority's bonds or were otherwise undetermined at the time of adoption of the Resolution.

E. The Authority closed the sale of its bonds on December 14, 1978, and, pursuant to a letter from the Authority dated January 9, 1979, will purchase $485,000 in aggregate principal amount of the Bonds of the District at a purchase price of $464,478.

F. It is in the best interest of the inhabitants of the District that the District confirm the sale of its Bonds to the Authority and supplement the Resolution by providing for certain terms and conditions of the issuance and sale of the Bonds that were dependent upon the sale of the Authority's bonds or were otherwise undetermined at the time of adoption of the Resolution.

Section 1.03. Definitions. The terms used in this Supplemental Resolution shall have the meanings set forth in Section 1.04 of the Resolution unless the context expressly requires otherwise.

ARTICLE II

FORM, AMOUNT, CONFIRMATION OF SALE AND DELIVERY OF BONDS

Section 2.01. Form and Amount of Bonds. The Bonds shall be issued in the form of one fully registered bond, numbered R-1, in the principal amount of Four Hundred Eighty-Five Thousand Dollars ($485,000).

Section 2.02. Confirmation of Sale of Bonds. The entire issue of the Bonds was previously, and is hereby confirmed to be, awarded to the West Virginia Water Development Authority, being sold to the Authority for a purchase price of Four Hundred Sixty-Four Thousand Four Hundred Seventy-Eight Dollars ($464,478), all pursuant to Section 3.06 of the Resolution, the Loan Agreement and said letter dated January 9, 1979, from the Authority to the District.

Section 2.03. Delivery of Bond No. R-1. Bond No. R-1, representing the entire issue of the Sewer Revenue Bonds, Series 1978, of the District, shall be delivered to the West Virginia Water Development Authority as soon as the Authority is ready to accept deliverance and pay for the same.

ARTICLE III

SCHEDULE X TO LOAN AGREEMENT

Section 3.01. Schedule X to Loan Agreement. Pursuant to Section 4.3 of the Loan Agreement, Schedule X attached thereto and incorporated therein shall be adjusted in accordance with the following table, and the dates and amounts on and in which the installments of principal of the Bonds become due and the rates of interest borne by such installments of principal shall be as set forth in said Schedule X as revised:

Year Ended October 1	Principal Payments	Interest Payments	Total Local Bonds Payments	Interest Rate
1980	----	$33,950	$33,950	----
1981	$ 5,000	$33,950	$38,950	6.00%
1982	$ 5,000	$33,650	$38,650	6.00%
1983	$ 5,000	$33,350	$38,350	6.00%
1984	$ 5,000	$33,050	$38,050	6.00%
1985	$ 5,000	$32,750	$37,750	6.00%
1986	$ 5,000	$32,450	$37,450	6.00%
1987	$ 5,000	$32,150	$37,150	6.00%
1988	$ 5,000	$31,850	$36,850	6.00%
1989	$ 5,000	$31,550	$36,550	6.40%
1990	$ 5,000	$31,230	$36,230	6.40%
1991	$ 5,000	$30,910	$35,910	6.40%
1992	$ 5,000	$30,590	$35,590	6.40%
1993	$ 5,000	$30,270	$35,270	6.40%
1994	$ 5,000	$29,950	$34,950	6.50%
1995	$ 5,000	$29,625	$34,625	6.60%
1996	$ 5,000	$29,295	$34,295	6.70%
1997	$10,000	$28,960	$38,960	6.75%
1998	$10,000	$28,285	$38,285	7.10%
1999	$10,000	$27,575	$37,575	7.10%
2000	$10,000	$26,865	$36,865	7.10%
2001	$10,000	$26,155	$36,155	7.10%
2002	$10,000	$25,445	$35,445	7.10%
2003	$10,000	$24,735	$34,735	7.10%
2004	$15,000	$24,025	$39,025	7.10%
2005	$15,000	$22,960	$37,960	7.10%
2006	$15,000	$21,895	$36,895	7.10%
2007	$15,000	$20,830	$35,830	7.10%
2008	$15,000	$19,765	$34,765	7.10%
2009	$20,000	$18,700	$38,700	7.10%
2010	$20,000	$17,280	$37,280	7.20%
2011	$20,000	$15,840	$35,840	7.20%
2012	$25,000	$14,400	$39,400	7.20%
2013	$25,000	$12,600	$37,600	7.20%
2014	$25,000	$10,800	$35,800	7.20%
2015	$30,000	$ 9,000	$39,000	7.20%
2016	$30,000	$ 6,840	$36,840	7.20%
2017	$30,000	$ 4,680	$34,680	7.20%
2018	$35,000	$ 2,520	$37,520	7.20%

ARTICLE IV

OTHER TERMS OF THE BONDS

Section 4.01. Alternate Paying Agent. In accordance with said letter, dated January 9, 1979, from the Authority, as the original purchaser of the Bonds, The Charleston National Bank, Charleston, West Virginia, is hereby designated as an alternative paying agent under the Resolution and Bond No. R-1.

Section 4.02. Payments into Sinking Fund. The District shall begin its monthly payments into the Sinking Fund on May 1, 1980, and Section 4.01(A)(2) of the Resolution is hereby supplemented to reflect such date.

ARTICLE V

MISCELLANEOUS

Section 5.01. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Supplemental Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Supplemental Resolution.

Section 5.02. Repeal of Conflicting Resolutions. All resolutions and orders, or parts thereof, in conflict with this Supplemental Resolution are to the extent of such conflict repealed.

Section 5.03. Effective Date. This Supplemental Resolution shall take effect immediately upon adoption.

Date: April 24, 1980

_____
Chairman

_____
Member

_____
Member

CERTIFICATE

I, Robert B. Menefee, Secretary of the Public Service Board of Harpers Ferry-Bolivar Public Service District, Jefferson County, West Virginia, certify that the foregoing document is a true and correct copy of the Supplemental Resolution adopted by the Public Service Board of Harpers Ferry-Bolivar Public Service District on April 21, 1980.

Given under my hand and the seal of Malden Public Service District this 22nd day of April, 1980.

Robert B Menefee
Secretary, Public Service Board

[SEAL]

WEST VIRGINIA
Water Development Authority
Celebrating 34 Years of Service 1974 - 2008

July 21, 2009

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

TO WHOM IT MAY CONCERN:

In reliance upon a certificate of John C. Kunkle, independent certified public accountants, and an opinion of Jackson Kelly PLLC, as bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative for the West Virginia Water Development Authority (the "Authority"), the present holder of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program); and Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA) (collectively, the "Series 2009 Bonds"), in the principal amounts of $629,612 each, respectively, by Harpers Ferry-Bolivar Public Service District (the "Issuer"), under the terms of the resolution authorizing the Series 2009 Bonds on a parity, with respect to liens, pledge and source of and security for payment from Net Revenues, with the Issuer's Sewer Revenue Bonds, Series 1978, dated April 22, 1980, issued in the original principal amount of $485,000 (the "Prior Bonds"). The Authority further hereby consents to the payment of debt service of the Series 2009 Bonds on a quarterly, rather than as required by the resolution authorizing the Prior Bonds.

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

Carol A. Cummings
Authorized Representative

{M0596994.1}

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wwda.org

CLOSING MEMORANDUM

To: **Financing Team**

From: **Bond Counsel**

Date: **July 21, 2009**

Re: **Harpers Ferry-Bolivar Public Service District**
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)
Sewer Revenue Bonds, Series 2009 B
(WVCWSRF Program/ARRA)

---

1. DISBURSEMENT TO BANK OF CHARLES TOWN (for Refinancing Project)

Payor:	WVDEP – State Revolving Fund
Source:	Series 2009 A Bond
Amount:	$68,971.34[1]
Form:	Wire
Payee:	Bank of Charles Town 111 E. Washington Street P.O. Box 906 Charles Town, WV 25414
ABA #:	057001418
Account #:	4000718
Beneficiary Name:	Harpers Ferry-Bolivar PSD
Bank:	Bank of Charles Town 111 E. Washington Street P.O. Box 906 Charles Town, WV 25414
Contact:	Steven B. Shaffer Branch Manager, Harpers Ferry Office 304-535-6336 Fax: 304-535-1227
Reference:	Payoff for loan # 4000718

---

[1] This is for a pay-off on July 21, 2009; the per diem is $15.26256. Consequently, the extra $15.66 would be needed if the closing slipped to July 22, 2009.

2. DISBURSEMENTS TO THE HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

A.

Payor:	WVDEP – State Revolving Fund
Source:	Series 2009 A Bonds Proceeds
Amount:	$125,928.66[2]
Form:	Wire
Payee:	Harpers Ferry-Bolivar Public Service District P.O. Box 235 192 Lake Quigley Drive Harpers Ferry, West Virginia 25425 (304) 535-2390
ABA #:	057001418
Account #:	12055315
Beneficiary Name:	Harpers Ferry-Bolivar PSD – Series 2009 A Project Fund
Bank:	Bank of Charles Town 111 E. Washington Street P.O. Box 906 Charles Town, WV 25414
Contact:	Steven B. Shaffer Branch Manager, Harpers Ferry Office 304-535-6336 Fax: 304-535-1227
Reference:	None

B.

Payor:	WVDEP - ARRA
Source:	Series 2009 B Bonds Proceeds
Amount:	$74,200
Form:	Wire
Payee:	Harpers Ferry-Bolivar Public Service District P.O. Box 235 192 Lake Quigley Drive Harpers Ferry, West Virginia 25425 (304) 535-2390
ABA #:	057001418
Account #:	12055315
Beneficiary Name:	Harpers Ferry-Bolivar PSD – Series 2009 B Project Fund
Bank:	Bank of Charles Town 111 E. Washington Street P.O. Box 906 Charles Town, WV 25414
Contact:	Steven B. Shaffer Branch Manager, Harpers Ferry Office

[2] This includes the additional $15.66 that may not be needed for the Refinancing.

	304-535-6336
	Fax: 304-535-1227
Reference:	None

3. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

Payor:	WVEDA – State Revolving Fund
Source:	Series 2009 A Bonds proceeds
Amount:	$31,500
Form:	Wire
Payee:	Harpers Ferry-Bolivar Public Service District Series 2009 A Reserve Account
Bank:	BB&T for benefit of Municipal Bond Commission
ABA:	051503394
Account #:	5270517317
Contact:	Sara Boardman, Executive Director West Virginia Municipal Bond Commission Suite 401 1207 Quarrier Street Charleston, WV 25301 304-558-3971
Reference:	Fund Series 2009 A Reserve Account

SWEEP RESOLUTION

Harpers Ferry-Bolivar Public Service District

WHEREAS, Harpers Ferry-Bolivar 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 the Bonds and is required to make up any deficiency in the reserve account established 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 account;

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 payments and any payment required to make up a deficiency in the reserve account for the Bonds 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 the Bonds, as set forth in Exhibit A, and any payment required to make up any deficiency in the reserve account for the Bonds shall be made to the MBC by an electronic transfer, to the extent funds are available, by the State Treasurer from the accounts set forth in Exhibit A 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 13th day of July, 2009.

Raymond E. Baker

Chairperson and Member

Member

Member

{M0597022.1}

CERTIFICATION

Certified a true copy of the "Sweep Resolution" duly adopted by the Public Service Board of HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT on July 13, 2009.

Dated this 21st day of July, 2009.

[SEAL, IF ANY]

James A. Addy
Secretary

{M0597022.1}

improvements and extensions to the existing public sewerage system of the Issuer (the "Physical Project"); (ii) refinancing an outstanding bank loan of the Issuer which was obtained in 2005 to provide part of then replacements and upgrades to the existing public sewerage system of the Issuer (the "Refinancing Project") (the Physical Project and the Refinancing Project collectively, the "Project"); (iii) funding a reserve account for the Bonds; and (iv) paying certain costs of issuance of the Bonds and related costs.

We have also examined the applicable provisions of the Act and the Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the ARRA Assistance 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 ARRA Assistance Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the ARRA Assistance 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 ARRA Assistance 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 DEP and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

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 ARRA Assistance 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 referred to in the Bond Legislation and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment from the Net Revenues with the Issuer's

Sewer Revenue Bonds, Series 1978, dated April 22, 1980, issued in the original principal amount of $485,000 (the "Prior Bonds"), 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. The Bonds bear no interest.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the ARRA Assistance 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,

Jackson Kelly PLLC

JACKSON KELLY PLLC

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

July 21, 2009

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

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

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, West Virginia 25304

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Harpers Ferry-Bolivar 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 $629,612 Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of an ARRA Assistance Agreement dated as of the date hereof, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are originally issued in the form of one Bond, registered to the Authority, bearing no interest and subject to principal forgiveness on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, to and including December 1, 2020, all as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds.

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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 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and the Bond Resolution duly adopted by the Issuer on July 13, 2009 (the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the ARRA Assistance 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 ARRA Assistance Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the ARRA Assistance 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 ARRA Assistance 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 DEP and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

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 ARRA Assistance 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 referred to in the Bond Legislation and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment from the Net Revenues with the Issuer's

Sewer Revenue Bonds, Series 1978, dated April 22, 1980, issued in the original principal amount of $485,000 (the "Prior Bonds"), 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. The Bonds bear no interest.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the ARRA Assistance 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 BR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Jackson Kelly PLLC

JACKSON KELLY PLLC

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

July 21, 2009

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

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

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, West Virginia 25304

Ladies and Gentlemen:

We have served as special counsel to Harpers Ferry-Bolivar Public Service District, a public service district, in Jefferson County, West Virginia (the "Issuer"). As such counsel, we have represented the Issuer (i) before the Public Service Commission of West Virginia in connection with the issuance of the above-referenced bonds and the acquisition and construction of the Physical Project (as defined in the Bond Legislation described below) and (ii) in connection with an Agreement to Exchange Interests in Real Property between the Issuer and the National Park Service. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Public Service Board of the Issuer on July 13, 2009 (the "Bond Legislation"), and the ARRA Assistance Agreement dated the date (the "Loan Agreement") among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection ("DEP").

We have examined the Loan Agreement, including all schedules and exhibits attached thereto; the Bond Legislation; orders of The County Commission of Jefferson County relating to the Issuer and the appointment of the current members of the Public Service Board of the Issuer; and such other documents, papers, agreements, instruments and certificates relating to the above-

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captioned Bonds of the Issuer (collectively, the "Bonds") as we have deemed necessary for the purposes of rendering this opinion.

We are of the opinion that:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and political subdivision of the State of West Virginia.

2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.

3. 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.

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 ordinance, 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. To the best of our knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreements, the Bond Legislation, the acquisition and installation of the Physical Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues therefor.

7. The Issuer has received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds, the acquisition and installation of the Physical Project, the operation of the System and the implementation of rates and charges, and the Issuer has taken any other action required for the imposition of such rates and charges; subject to such adjustment in rates and charges, if any, that may occur as a result of funding the Physical Project with funds made available by the American Recovery and Reinvestment Act of 2009, as contemplated by General Order No. 182.09 entered by the Public Service Commission of West Virginia on April 16, 2009. The Issuer has received a Commission Order of the Public Service Commission of West Virginia dated April 17, 2009 (final on May 7,

2009), in Case No. 08-2118-PSD-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Physical Project and approving the financing for the Physical Project; subject to the provisions of the said General Order No. 182.09 concerning American Recovery and Reinvestment Act of 2009 related funding. The time for appeal of such Order has expired prior to the date hereof.

We refer you to our separate opinion, dated July 8, 2009, regarding title matters relating to the Issuer and the Physical Project. This opinion does not address any of the matters addressed in that opinion.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

Jackson Kelly PLLC

Jackson Kelly PLLC

JACKSONKELLY
ATTORNEYS AT LAW PLLC
150 CLAY STREET • SUITE 500 • P.O. BOX 619 • MORGANTOWN, WEST VIRGINIA 26507 • TELEPHONE: 304-284-4100 • TELECOPIER: 304-284-4140
www.jacksonkelly.com

July 8, 2009

Harpers Ferry-Bolivar Public Service District
PO Box 235
Harpers Ferry, West Virginia 25425

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

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

Re: Final Title Opinion for Harpers Ferry-Bolivar Public Service District

Ladies and Gentlemen:

We have served as special counsel to the Harpers Ferry-Bolivar Public Service District (the "Issuer") in connection with a proposed project to acquire and install a new belt filter press sludge processing system (the "Project"). We provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project. Please be advised of the following:

1. We are of the opinion that the Issuer is a duly created and validly existing public service district possessed with all the powers and authority granted to public service districts under the laws of the State of West Virginia to acquire, install, operate and maintain the Project as approved by the DEP.

2. The Issuer has obtained all necessary permits and approvals required by it for the acquisition and installation of the Project.

3. The Project will be located inside the existing sewage treatment plant (the "Plant"). We have investigated and ascertained the location of, and are familiar with the legal description of, the site of the Plant. As shown by the plans for the Project prepared by Alpha Associates, Incorporated, the consulting engineers for the Project, there are no additional easements and/or rights of way required for the Project.

C0596527.1

4. We have examined the records on file in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, the county in which the Project is to be located, (ii) the Agreement to Exchange Interests in Real Property between the Issuer and the National Park Service (the "Exchange Agreement'), (iii) the Special Use Permit SUP NCR HAFE 5390-300 issued by the National Park Service, and (iv) the letter dated July 1, 2009 (L3031), from the Superintendent of Harpers Ferry National Historic Park. Because of the special nature of our engagement, our examination was limited to the site of the Plant, and this opinion does not address easements or rights-of-way for exiting pipes or other components of the Issuer's sewerage system outside the Plant. In our opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of site preparation for the Project pending consummation, prior to June 1, 2010, of the property exchange pursuant to the Exchange Agreement. It is further our opinion that, upon consummation of the property exchange contemplated by the Exchange Agreement, the Issuer will acquire legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of acquisition and installation, operation and maintenance of the Project for the estimated life of the Project.

5. The deed from the Town of Bolivar referred to in the Exchange Agreement has been duly recorded in the Office of the Clerk of the County Commission of Jefferson County. As described above, the Project is located inside the existing Plant, and there are no easements or rights-of-way required for the Project except as described in Paragraph 4, above.

Very truly yours,

Jackson Kelly PLLC

Jackson Kelly PLLC

M0597017.1

AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY

THIS AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY is made by and between the HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, hereinafter referred to as the "PSD," and the UNITED STATES OF AMERICA, acting by and through the NATIONAL CAPITAL REGION of the NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, hereinafter referred to as the "National Park Service."

WITNESSETH:

WHEREAS, by virtue of a Deed from the State of West Virginia dated December 9, 1953, and recorded among the land Records of Jefferson County, West Virginia, in Liber _____, folio _____, the United States of America acquired both the fee-simple title to a certain parcel of land located within the boundaries of the Harpers Ferry National Historical Park identified as "Tract Number 101-02", and a scenic easement interest in a certain parcel of land also located within the boundaries of Harpers Ferry National Historical Park identified as Tract Number 103-03; and

WHEREAS, by virtue of a town ordinance, duly enacted on November 5, 2009, the Town of Bolivar intends to convey its fee-simple interest in three certain parcels of land to the PSD, comprising respective portions of Tract Number 103-03, which are hereinafter referred to in the aggregate as Tract Number 103-48, and more particularly depicted on Exhibit "A," which is attached hereto and made a part hereof; and

WHEREAS, after its fee-simple acquisition of Tract Number 103-48 from the Town of Bolivar, the PSD intends to convey its interest therein to the National Park Service in accordance with the terms of this agreement; and

WHEREAS Harpers Ferry National Historical Park is a unit of the National Park System, and is administered by the National Park Service; and

WHEREAS, upon completing an Environmental Assessment, hereinafter referred to as an "EA," in compliance with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, hereinafter referred to as "NEPA," the National Park Service issued Construction Permit Number 3850:76-001, dated October 8, 1976, to the PSD authorizing the construction of a wastewater treatment facility within a portion of Tract Number 101-02; and

WHEREAS, although a condition of the aforementioned 1976 construction permit stipulated that the National Park Service would, upon the expiration of the aforesaid construction permit, issue a subsequent Special Use Permit to the PSD for the continued operation and maintenance of the wastewater treatment facility, no subsequent Special Use Permit was issued to the PSD as intended; and

WHEREAS, in order to obtain funding from the West Virginia Clean Water State Revolving Loan Fund for needed repairs and improvements to the existing wastewater treatment facility, the PSD must demonstrate it possesses an interest in the real estate upon which the existing facility is located; and

WHEREAS the National Park Service acknowledges the vital public interest served by the wastewater treatment facility, and desires to work cooperatively with the PSD to develop a valid means for the facility's long term operation at its current location; and

WHEREAS, to obtain the requisite funding for needed repairs and improvement and to provide for the long term operation of the wastewater treatment facility at its current location, the PSD desires to obtain from the National Park Service an interest in that certain parcel of land, being a portion of Tract Number 101-02, and hereinafter identified as "Tract Number 101-09," as more particularly depicted on Exhibit "B," which is attached hereto and made a part hereof; and

WHEREAS the National Park Service desires to obtain from the PSD, the fee-simple interest in Tract Number 103-48 as a means of better preserving and protecting the natural and scenic character of the land and resources associated with Harpers Ferry National Historical Park; and

WHEREAS the National Park Service is willing to convey to the PSD a non-exclusive, commercial easement in gross in Tract Number 101-09, subject to specific restrictions as to future land use in return for the PSD's conveyance to the National Park Service of the fee-simple interest in Tract Number 103-48; and

WHEREAS the PSD is willing, after its acquisition of a fee-simple interest in Tract Number 103-48 from the Town of Bolivar, to convey to the National Park Service the fee-simple interest in Tract Number 103-48 in return for the National Park Service's conveyance to the PSD of a non-exclusive, commercial easement in gross in Tract Number 101-09, subject to specific restrictions as to future land; and

WHEREAS the National Park Service and the PSD believe that the public interest will benefit through the accomplishment of an exchange of interests in land as hereinafter described; and

WHEREAS the National Park Service and the PSD wish to engage in a process through which an exchange of interests in land can be consummated and to set out the respective rights and responsibilities of the parties in this transaction.

NOW, THEREFORE, the National Park Service, under the authority provided by the Land and Water Conservation Fund Act, 16 U.S.C. §460*l*-22(b), and the PSD enter into this agreement to complete the exchange of interests in land described herein for the mutual benefit of the parties hereto and their respective successors and assigns. The terms and conditions of this agreement are as follows:

1. The National Park Service shall pay the costs associated with obtaining a real estate appraisal of the interests in land to be exchanged. The appraiser will work under the direction of the Department of the Interior Appraisal Services Directorate, hereinafter referred to as the "ASD," in order to ensure that the completed appraisal complies with the Uniform Appraisal Standards for Federal Land Acquisition. Both parties will have an opportunity to review the appraisal establishing the market values of the interests in land to be exchanged prior to

rendering a decision as to whether to proceed with the exchange as contemplated herein. However, only upon the written approval of the appraisal by the ASD acknowledging the appraised values as the basis for an equal value exchange of interests in land will the National Park Service be authorized to proceed with the exchange of interests as contemplated herein.

2. The National Park Service shall obtain a preliminary title commitment and subsequent title insurance policy for the interests in land to be conveyed by the PSD.

3. In accordance with National Park Service guidelines governing proposed land exchanges, the National Park Service shall, immediately upon the execution of this agreement, undertake to notify the public and various governmental bodies of the proposed exchange (public notification shall include publication of a Notice of Realty Action in a local newspaper providing a minimum 45-day period for public comment). The National Park Service agrees to pay all costs incurred in publishing the requisite public notification of the proposed exchange. The National Park Service also shall consider the effects of the proposed exchange as required by all applicable laws, including NEPA. To this end, the National Park Service agrees to perform, at its own expense, all NEPA compliance required for the proposed exchange. The National Park Service further agrees that, immediately upon the execution of this agreement, it shall commence the procedures necessary for the superintendent of Harpers Ferry National Historical Park to sign a categorical exclusion form under section 3.4(C)(2) of Director's Order # 12: Conservation Planning, Environmental Analysis, and Decision-Making.

4. Concurrent with the National Park Service's execution and delivery to the PSD of a Deed of Easement substantially in the form of the draft document attached hereto as Exhibit "C," granting the PSD a non-exclusive, commercial easement in gross in Tract Number 101-09, subject to specific restrictions as to future land use, the PSD agrees to execute and deliver to the National Park Service a Special Warranty Deed substantially in the form of the draft document attached hereto as Exhibit "D," conveying to the National Park Service the fee-simple title to Tract Number 103-48.

5. Concurrent with PSD's execution and delivery to the National Park Service of a Special Warranty Deed substantially in the form of the draft document attached hereto as Exhibit "D," conveying to the National Park Service the fee-simple title to Tract Number 103-48, the National Park Service agrees to execute and deliver to the PSD a Deed of Easement substantially in the form of the draft document attached hereto as Exhibit "C" granting the PSD a non-exclusive, commercial easement in gross in Tract Number 101-09, subject to specific restrictions as to future land use.

6. This agreement terminates upon the earlier of 1) the simultaneous exchange of the interests in land as contemplated herein; or 2) one (1) year from the date of the last signature executing this agreement.

7. Both parties enter into this agreement with the expectation that the exchange of interests in land as set forth herein will be mutually beneficial and should occur as quickly as possible. In the unlikely event that the PSD is unable to convey a fee-simple title in Tract Number

103-48 to the National Park Service in exchange for the National Park Service's conveyance to the PSD of a non-exclusive, commercial easement in gross in Tract Number 101-09, the parties pledge to work together to identify other property suitable for the PSD to convey to the National Park Service in exchange for the aforementioned easement over Tract Number 101-09.

8. INTEREST OF MEMBERS OF CONGRESS: Pursuant to 41 U.S.C. § 22, Interest of Member of Congress, "No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon."

9. ANTI-DEFICIENCY ACT: Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), as amended, nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

10. All terms and conditions with respect to this agreement are expressly contained herein and the PSD agrees that no representative or agent of the United States has made any representation or promise with respect to this agreement not expressly contained herein.

11. This agreement contains the complete agreement between the parties and may only be amended by a written instrument executed by both parties.

12. The terms and conditions aforesaid are to apply to and bind the administrators, successors and assigns of the PSD and the National Park Service and its assigns.

13. The captions inserted in this agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this agreement or any provision hereof, or in any way affect the interpretation of this agreement.

14. COUNTERPARTS: This agreement may be executed in one or more counterparts, each of which counterpart shall for all purposes be deemed to be an original; but for all such counterparts together shall constitute but one instrument.

15. The effective date of this agreement shall be deemed to be the last date, in point of time, on which all parties hereto have executed this agreement.

16. Notice concerning the agreement shall be provided to the parties at the addresses provided below:

PSD
Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

NATIONAL PARK SERVICE
Regional Director
National Capital Region
National Park Service
1100 Ohio Drive, S.W.
Washington, D.C. 20242

{C1532421.1}

Any notice required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand to the party and when the party giving such notice has received a signed receipt therefore, or (ii) when delivered by the United States Postal Service, postage prepaid, or by a recognized commercial air or local courier service, addressed as noted above (or addressed in such other manner as the party being notified shall have requested by such written notice to the other party), except that refusal to accept delivery of notice shall be deemed to be receipt and acceptance hereunder.

SIGNATURES APPEAR NEXT PAGE

Agreed between the parties:

ATTEST:

Robert J Hardy
4-29-09
James A. Cody
[signature]
Date

HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT

By: Raymond E. Billie
Name
Title P.D Chairman
4/29/09
Date

ATTEST:

L Mendelson-Jelmini

5/12/09
Date

UNITED STATES OF AMERICA

By: Margaret O'Dell
Margaret G. O'Dell
Regional Director
National Capital Region
National Park Service
Department of the Interior

5-12-09
Date

{C1532421.1}

EXHIBIT "C"

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this _____ day of _____, 2009, by and between the UNITED STATES OF AMERICA, by and through the SECRETARY OF THE INTERIOR, acting by and through the Regional Director, National Capital Region, National Park Service, hereinafter referred to as the "GRANTOR," and the HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, hereinafter referred to as the "GRANTEE."

WITNESSETH:

WHEREAS the Act of June 30, 1944 (Pub. L. No. 78-386), as amended by the Act of October 24, 1974 (Pub. L. No. 93-466), authorizes the Secretary of the Interior to acquire lands or interests in land by donation, purchase with donated or appropriated funds, or exchange, within the boundaries of Harpers Ferry National Historical Park, hereinafter referred to as the "Park;" and

WHEREAS the GRANTOR is the fee-simple owner of certain real property hereinafter described, situated in Jefferson County, West Virginia, included within the boundary of the Park, and identified as Tract Number 101-09, as more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS the GRANTOR issued Construction Permit Number 3850:76-001, dated October 8, 1976, authorizing the GRANTEE'S construction of a wastewater treatment facility within the boundaries of Tract Number 101-09; and

WHEREAS, in order to provide the GRANTEE with a sufficient interest in Tract Number 101-09 to enable the continued efficient operation and maintenance of the aforesaid facility, the Secretary of the Interior has determined it to be necessary to convey unto the GRANTEE, a non-exclusive, commercial easement in gross in Tract Number 101-09, subject to specific restrictions as to future land.

NOW THEREFORE, for and in consideration of the GRANTEE'S conveyance to the United States of the fee-simple interest in Tract Number 103-48, Harpers Ferry National Historical Park, the receipt and sufficiency of which is hereby acknowledged, the GRANTOR does hereby convey, without any warranty of title whatsoever, unto the GRANTEE a non-exclusive, commercial easement in gross providing for the continued operation and maintenance of an existing wastewater treatment facility within the boundaries of Tract Number 101-09, which interest shall be neither assignable nor divisible. The terms, conditions and/or restrictions of the easement being hereinafter set forth.

AND BEING a portion of that certain tract of land acquired by the GRANTOR herein from the State of West Virginia by a deed dated December 9, 1953, and recorded among the land Records of Jefferson County, West Virginia, in Liber , folio .

The purpose of this easement is to provide the GRANTEE with a sufficient interest in Tract Number 101-09 to enable the GRANTEE'S continued efficient operation, maintenance, repair, improvement and replacement, subject to the limitations set forth herein, of an existing wastewater treatment facility. The limitations and restrictions included herein are intended to protect the historic and scenic character of the Park, and to prevent or minimize incompatible visual intrusion into the Park's viewshed.

The said easement is of a nature and character to the extent herein expressed; to be and to constitute a servitude in perpetuity upon the herein described property of the GRANTOR; subject to the terms, reservations, restrictions and covenants set forth as follows:

1. Notwithstanding its nature as a commercial easement in gross, the property interest conveyed herein shall be neither assignable nor divisible.

2. The land described in Exhibit "A" attached hereto shall be used by the GRANTEE as the site for a wastewater treatment facility and for no other purpose.

3. No modifications, alterations, or other structural improvements to the wastewater treatment facility are to be undertaken by the GRANTEE without obtaining the prior written approval of the Secretary of the Interior or duly authorized designee, which

consent shall not be unreasonably withheld or delayed. In no event shall the height of any portion of the facility, including but not limited to lighting fixtures, exceed twenty-five (25) feet as measured from the ground floor elevation of the central portion of the facility.

4. The exterior finish of the wastewater treatment facility, including the roof, shall be comprised of non-reflective materials of a neutral or earthen color and maintained in a good condition by the GRANTEE. Painted surfaces shall be coated with lead-free paint in a neutral or earthen, non-reflective color. The GRANTOR recommends using "NPS Brown" in a matte finish, and shall provide color specifications upon request. Prior to the painting of any exterior surface, the GRANTEE will provide a color sample to the GRANTOR for review and approve the color. Such approval shall be provided in writing by the Superintendent of Harpers Ferry National Historical Park and is not to be unreasonably withheld.

5. No lighting fixture shall be placed on the land described in Exhibit "A" or upon any portion of the aforesaid facility whereby light is directed beyond the boundaries of the land described in Exhibit "A." All exterior lighting fixtures shall be hooded or otherwise shielded in such a manner so as to direct the light downward and to ensure the light source is not directly visible from adjacent properties.

6. The GRANTEE agrees that the noise level of mechanical equipment associated with the aforesaid facility shall not exceed seventy (70) decibels as measured from any point on the external boundary of the land described in Exhibit "A."

7. No trees or shrubs located on the land described in Exhibit "A" shall be cut, trimmed or pruned without the prior written authorization of the GRANTOR. Notwithstanding the above, permission need not be obtained for the removal of dead, diseased or injured trees only, when such removal is necessary for reasons of safety. However, the GRANTEE is required to notify the GRANTOR by telephone or in writing prior to the removal of any such dead, diseased or injured tree measuring 8-inches in diameter or greater.

8. In the event the GRANTEE uses the land described in Exhibit "A" for any purpose other than for the operation and maintenance of a wastewater treatment facility, or the facility is deemed by the GRANTEE as no longer needed, or remains unused or otherwise abandoned for a period of 180 consecutive days, the easement granted herein shall cease and revert to the GRANTOR.

9. In the event any one or more of the covenants shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or lack of enforceability shall not affect any other provision hereof.

10. The GRANTOR shall have the right and shall be permitted at reasonable times and upon prior notice to the GRANTEE, to enter upon the property described herein in order to inspect and ascertain whether there is compliance with the restrictions of this easement.

11. No hazardous or toxic materials shall be disposed of on the land described in Exhibit "A." Hazardous materials used in the treatment of municipal wastewater are to be stored in properly regulated and maintained containers on the land described in Exhibit "A" in a safe and secure manner. Thus, the supply of said materials shall not at any time exceed the amount which is required for use over a period of ninety (90) calendar days. Such hazardous materials shall be properly stored within in a secured structure so as to prevent an unregulated release of said materials, the theft of said materials, or damage from natural causes, workplace accidents or vandalism, to any container in which said materials are stored. No underground fuel storage tanks are permitted to be installed on the land described in Exhibit "A."

12. No signs, billboards or advertisements shall be displayed or placed upon the property described herein with the exception of one non-illuminated sign no greater than 24-inches high and 36-inches wide, identifying the property's current use, the name of the entity responsible for the operation of the facility, and any such warnings or postings required by law.

13. No trash, ashes, or any other unsightly or offensive material shall be dumped or stored on the land described in Exhibit "A."

14. All notices, correspondence or requests for approvals as herein required or permitted shall be made in writing, and shall be sent by certified mail, return receipt requested; delivered by hand; or sent by overnight mail carrier to the following:

GRANTEE: Harpers Ferry-Bolivar Public Service District
P.O. Box235
Harpers Ferry, West Virginia 25425

GRANTOR: Superintendent
Harpers Ferry National Historical Park
Harpers Ferry, West Virginia

or to such other address as any party may from time to time advise the other in writing.

15. Any notice required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand to the party and when the party giving such notice has received a signed receipt therefore, or (ii) when delivered by the United States Postal Service, postage prepaid, or by a recognized commercial air or local courier service, addressed as shown in Paragraph 14 (or addressed in such other manner as the party being notified shall have requested by such written notice to the other party), except that refusal to accept delivery of notice shall be deemed to be receipt and acceptance hereunder. The Secretary of the Interior's approval of an action requested by the GRANTEE, shall be deemed granted if the Secretary of the Interior, or duly authorized designate, has not responded in writing within sixty (60) calendar days of the GRANTOR'S's receipt, in accordance with this paragraph, of a written request from the GRANTEE. It is agreed by the parties that the GRANTOR'S initial response to the GRANTEE'S written request for the GRANTOR'S approval of an action may contain the

GRANTOR'S request for an additional sixty (60) calendar days in which to further review the GRANTEE'S request prior to rendering a final decision. The parties recognize that the Secretary of the Interior may find that certain requests require compliance with legal frameworks, such as the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, or the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470 *et seq.*, prior to rendering a final decision. If such circumstance arises, then the GRANTOR'S written response shall indicate that approval is conditioned upon the GRANTOR'S compliance with the law. In the event the GRANTOR does not provide a written response to the GRANTEE, within the additional sixty (60) calendar day review period requested by the GRANTOR, then the Secretary of the Interior's approval of the action requested by the GRANTEE shall be deemed to have been granted.

16. This easement is subject to all laws, regulations and rules governing National Park Service property and all other applicable laws and regulations now in force or hereafter enacted or promulgated. Nothing in this easement shall be construed as in any way impairing the general powers of the National Park Service for supervision, regulation and control of its property under any such applicable laws, regulations or rules.

SIGNATURE APPEARS NEXT PAGE

IN TESTIMONY WHEREOF, the United States of America by and through the Secretary of the Interior, the GRANTOR, has executed or caused this Deed of Easement to be executed on its behalf as of the date first herein above written as its free act and deed for the uses and purposes herein contained, and intending to be legally bound, has of this day and year first above written, caused these presents to be executed by Margaret G. O'Dell, Regional Director, National Capital Region, National Park Service, United States Department of the Interior, as its true and lawful attorney-in-fact to acknowledge and deliver this Deed of Easement as its free act and deed for the uses and purposes herein contained.

WITNESS: UNITED STATES OF AMERICA

_____ By: _____
Margaret G. O'Dell
Regional Director
National Capital Region
National Park Service
United States Department of the Interior

DISTRICT OF COLUMBIA:)
) ss:
CITY OF WASHINGTON:)

Before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Margaret G. O'Dell, personally well known (or satisfactorily proven by oath of credible witness) to me to be the person whose name is subscribed to the foregoing and annexed Instrument, who, being by me first duly sworn, did depose and state that she is the Regional Director, National Capital Region, National Park Service, U.S. Department of the Interior, and that she, being duly authorized so to do, executed and delivered the foregoing and annexed Instrument in the name and on behalf of the United States of America by and through the Secretary of the Interior and acknowledged the same to be its free act and deed.

WITNESS my hand and official seal this _____ day of _____, 2009.

_____ My Commission Expires: _____
Notary Public

This Deed of Easement was prepared by the Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242

{C1532421.1}

EXHIBIT "D"

SPECIAL WARRANTY DEED

THIS DEED, made this _____ day of _____, 2009, by and between the HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, hereinafter referred to as the "GRANTOR," and the UNITED STATES OF AMERICA, Washington, D.C. 20240, hereinafter referred to as the "GRANTEE."

WITNESSETH:

The GRANTOR, in consideration of the GRANTEE'S execution and delivery of a Deed of Easement granting the GRANTOR herein an non-exclusive, commercial easement in gross, subject to specific restrictions as to future land use in that certain tract or parcel of land located within the boundaries of Harpers Ferry National Historical Park and more particularly identified as Tract Number 101-09, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey with special warranty of title unto the said GRANTEE and its assigns, in fee-simple, forever, the following described property:

HARPERS FERRY NATIONAL HISTORICAL PARK
TRACT NUMBER 103-48

"Tract 1," "Tract 2," and "Tract 3," containing 2,479 square feet, 2,318 square feet and 1,495 square feet, respectively, as more particularly depicted on that certain plat entitled "PLAT OF EXCHANGE PROPERTIES BETWEEN THE UNITED STATES OF AMERICA AND HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT, HARPERS FERRY DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA, P/O TAX MAP 4, PARCEL 25, DB 199, PAGE 41" prepared by ALPHA Associates, Inc., and dated February 2009.

The above described parcels, designated in the aggregate as Tract Number 103-48, Harpers Ferry National Historical Park, is all of the same land as was conveyed to the GRANTOR by the Town of Bolivar by a deed dated _____, 2009, and recorded among the Land Records of Jefferson County, West Virginia, in Deed Book _____, Page _____.

The acquiring Federal agency is the United States Department of the Interior, National Park Service.

TOGETHER with the hereditaments and appurtenances thereunto belonging; together with all right, title and interest of the GRANTOR in and to the banks, beds and waters of any stream or river bordering, traversing, opposite to or fronting upon said land, and in and to alleys, roads, streets, ways, strips, gores or railroad rights-of-way traversing, abutting or adjoining said lands, and in any means of ingress and egress appurtenant thereto.

TO HAVE AND TO HOLD the said property together with all and singular the rights and privileges thereto belonging.

SUBJECT only to those rights outstanding in third parties for existing easements for public roads and highways, public utilities, railroads and pipelines, and to any applicable liens, encumbrances and restrictions, if any, contained in instruments of record in the Land Records of Jefferson County, West Virginia.

THE GRANTOR covenants with the GRANTEE and its assigns that it is lawfully seized in fee-simple of the premises; that it has the right to convey said estate in land; that it has done no act to encumber the same; that the said GRANTEE and its assigns shall have quiet peaceful possession of the same, free and clear from any and all liens and encumbrances except for those specifically excepted or reserved above, that it, the said GRANTOR, will warrant specially the property hereby granted, and will execute such further assurances as may be requisite.

IN WITNESS WHEREOF, the said GRANTOR has caused its hand and seal to be hereunto subscribed the day and year first above written.

ATTEST:

HARPERS FERRY-BOLVIAR PUBLC SERVICE DISTRICT

_____

_____ (Seal)

(STATE OF WEST VIRGINIA)
(COUNTY OF)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, whose name is signed to the foregoing document, personally appeared before me and acknowledged himself to be the _____ of the Harpers Ferry-Bolivar Public Service District, and that he as such _____ , being authorized to do so, executed the foregoing document this _____ day of _____, 2009.

_____
Notary Public

My Commission Expires: _____

This Deed was prepared by the National Park Service, National Capital Region, Land Resources Program Center, 1100 Ohio Drive, S.W., Washington, D.C. 20242.

{C1532421.1}

MEMORANDUM

TO: Ryan White

FROM: Taunja Willis-Miller

RE: Harpers Ferry-Bolivar Public Service District

DATE: July 18, 2009

Here are the Harpers Ferry-Bolivar closing documents. There are at least 4 originals of all the executed documents except for the Certificate of Registration and Acceptance of Duties as Registrar. The PSD signed in black, but I'm comfortable with that (I was there and saw them sign, besides the fact that now a blue signature can be copied as easily as a black one). The Accountant's Certificate is not a manual signature, but it's on their letterhead and, as you know, was sent by them.

Speaking of the Accountant – they sent an additional bill for the CPA's certificate, which is in the folder with the First Draw Resolution. I don't think that it was included with what Dick sent to DEP. However, I think that, even with the additional bill, the total bill is less than what Dick allocated and what is included for the first draw. If not, Dick used $26,000, rather than $25,000 for bond counsel, and the extra $1,000 will cover it (it's $800). So, hopefully, it can also be paid from the first draw. Not all of the invoices are not included in the folder with the First Draw Resolution; I assume DEP has the others (specifically, Alpha's).

The closing checklist is attached, and I have highlighted the few remaining issues. I'll give the PSD another call first thing Monday morning and will call or send you an email about what I find out.

Please PDF Kathy copies of the things she's supposed to have: copies of the Bonds, the Bond Resolution, the ARRA Assistance Agreement and our bond counsel opinions.

On Tuesday, either you can do it or let me know and I will: (i) We need to let the PSD know that the closing has occurred. They're going to do a press conference. I pointed out to them the Agreement provision requiring ARRA publicity. (ii) We need to notify Alpha Associates, so they can issue the notice of award. We are to email Ryan Perks (rperks@alphaaec.com), with copies to Kim Coomler and Dick Klein.

Please send me an email or call my cell phone (539-8357) on Monday if any issues arise. Thanks!

Form 10-114
Rev. DEC. 04

UNITED STATES DEPARTMENT OF THE INTERIOR
National Park Service

Special Use Permit

Name of Use: Business Operations

Date permit reviewed May 1 2009
Date permit expires June 1 2010

Long Term _____

Short Term X

Permit # NCR HAFE 5300 390
Region Park Type No. #

Harpers Ferry National Historical Park
Name of Area

Harpers Ferry-Bolivar
Public Service District (PSD) of P.O. Box 235, Harpers Ferry, WV 25425 304-535-2390
Name or Permittee Address Phone

is hereby authorized during the period from (Time 12:00 a.m. day 1 Month June 2009), through (Time 12:00 p.m. day 1 June 2010), to use the following described land or facilities in the above named area:

The subject area is a 0.637-acre portion of NPS HAFE Tract 101-02 occupied by an existing wastewater treatment plant.

For the purpose(s) of: Operating and maintenance of a wastewater treatment facility.

Authorizing legislation or other authority: 16 U.S.C. 3

NEPA Compliance: CATEGORICALLY EXCLUDED X EA/FONSI __ OTHER APPROVED PLANS __

Categorically excluded under Section 3.4 (A)(6) of Director's Order #12: Conservation Planning, Environmental Analysis, and Decision-Making

PERFORMANCE BOND: Required _____ Not Required X Amount $

LIABILITY INSURANCE: Required X Not Required _____ Amount $ 1,000,000 per incident
$3,000,000 in the aggregate

ISSUANCE of this permit is subject to the conditions on the reverse hereof and appended pages and when appropriate to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of $ waived

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied herein.

PERMITTEE _____ Date 6-19-09
Signature

Authorizing Official Rebecca L. Hansell Date 6/20/09
Signature

CONDITIONS OF THIS PERMIT

1) The Permittee shall exercise this privilege subject to the supervision of the Superintendent, Harpers Ferry National Historic Park (Superintendent), and shall comply with all applicable laws and regulations of the area.

2) Damages - The Permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the Permittee is authorized to make of the land described in this permit.

3) Benefit - No Member of Congress shall be admitted to any share or part of this permit or to any benefit that may arise therefrom: but this provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

4) Assignment - This permit may not be transferred or assigned without the consent of the Superintendent, in writing.

5) Revocation - This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Superintendent.

6) The Permittee is prohibited from knowingly giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(a)(4)].

7) The Permittee will comply with applicable public health and sanitation standards and codes.

8) The Permittee acknowledges and agrees that this permit is being issued to allow the continued operation and maintenance (only) of the Permittee's existing wastewater treatment plant while the Permittee and Permittor work cooperatively to effect an exchange of interests in real property. As intended, the Permittor will convey a perpetual, non-exclusive, commercial easement in gross to the Permittee allowing for the continued operation, maintenance and improvements of the facility on NPS property in exchange for the Permittee's fee-simple interest in certain lands and resources associated with the Harpers Ferry National Historical Park.

9) The Permittee will indemnify, save, and hold harmless and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of or from any omission or activity of the Permittee, or its employees to the extent allowable under West Virginia law.

10) The Permittee agrees to be fully responsible for the management, performance, use and safety within the parklands authorized herein for occupation by the Permittee. The Permittee hereby accepts responsibility and assumes liability for any and all tort claims arising from the actions or omissions of its representatives or employees directly or indirectly connected with the work performed, the maintenance of, or the use of this facility to the greatest extent permitted by law. To the extent that the work is performed by non-Governmental persons, or organizations, the Permittee shall require such persons or organizations to:

a) Procure general comprehensive liability insurance from responsible companies with a minimum limitation of $1,000,000 (one million dollars) per person for any one claim and an aggregate limit of $3,000,000 (three million dollars) for any number of claims arising from any one incident, or the minimum required by law, if any, whichever amount is greater. The United States of America shall be named as an additional insured on all policies. The permit number will be included on said policy. All such policies shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles, thereunder, and such insurance policies shall be obtained by, be for the account of, and be at the insured's sole risk. A copy of the Certificate of Insurance evidencing proper insurance coverage and referencing the permit number shall be returned to NPS at least 14 days prior to issuance of the permit.

b) Pay the United States the full value for all damages to the lands or other property of the United States caused by the Permittee or by the Permittee's employees, contractors, or employees of the contractors.

c) Indemnify, save and hold harmless and defend the United States against all fines, claims, damages, losses, judgments and expenses rising out of, or from any omission or activity in connection with activities under this permit.

d) The Permittee shall ensure that the contractors' liability insurance remains in full force during the entirety of the period covered by this agreement.

11) All wastes, litter, and debris generated by the Permittee will be removed from parkland daily so that the park and work area are maintained in a clean and presentable condition at all times.

12) Access to adjoining parkland will not be encumbered or blocked by the activities authorized by this Permit.

13) The Permittee shall be responsible for the cost and repairs to any structures, facilities, installation, sod, soils, or landscape vegetation on parkland damaged by the activities authorized under this permit and shall, at the direction of NPS, submit detailed plans for the repair, restoration and/or replacement of such.

14) No vegetation outside of permitted areas may be cut or destroyed without first obtaining approval from the Superintendent. Any vegetation that must be removed shall be mitigated as specified by the Superintendent.

15) The species, size and planting location of replacement plantings will be determined by NPS. The NPS shall have the right to inspect and /or select replacement plants at the grower(s) prior to the deliver of plant material to the site. Inspection of plant material at the nurseries and growers does not prohibit NPS's rejection of same onsite at a later date. The Permittee will plant the trees during either the spring or fall planting season, in accordance with the "NPS-NCR Tree Planting Specifications" (available upon request).

16) No sediment, sewage, fuel, chemical or water discharges onto NPS lands are allowed.

17) The Permittee shall have received all necessary permits required by outside agencies for work to be performed under this permit. The Permittee shall supply NPS with a copy of these permits upon request.

18) The Permittee will maintain a copy of the approved permit at the work site at all times.

19) The Permittee agrees to comply with instructions of NPS representatives during the term of this permit regarding activities on NPS land.

20) Work or activities not specified in this permit shall not be performed without additional written permission from the Superintendent.

21) The NPS contact for this project is Andrew Lee, Lands Management Assistant, Harpers Ferry National Historical Park. Mr. Lee can be reached by telephone during business hours on (304) 535-6038.

United States Department of the Interior

NATIONAL PARK SERVICE
Harpers Ferry National Historical Park
P.O. Box 65
Harpers Ferry, West Virginia 25425

IN REPLY REFER TO:

L3031 (HAFE)

July 1, 2009

Harpers Ferry-Bolivar Public Service District
P.O. Box 235
Harpers Ferry, West Virginia 25425

Dear Sir:

I am writing to express my strong support of the Harpers Ferry-Bolivar Public Service District's (PSD) plan to upgrade the wastewater treatment plant located within the boundary of Harpers Ferry National Historical Park. The National Park Service (NPS) acknowledges the vital public interest served by the plant and I want to take this opportunity to assure you of our continued commitment to the project.

As you are well aware, the NPS and the PSD are working cooperatively to resolve a long-standing oversight that has allowed the facility to operate since its construction in the 1970s without any formal NPS authorization. To remedy this situation and in order to secure a loan for the current improvement project, the NPS and PSD have explored a number of options to provide the PSD with the sufficient interest in the real property upon which the facility is located. After much internal NPS discussion and consultation with the PSD, a mutually acceptable solution was found. As envisioned, the NPS will convey a perpetual, non-exclusive, commercial easement for the plant property in exchange for the fee-simple interest in certain other lands associated with the Harpers Ferry National Historical Park. When consummated, this exchange will allow the PSD to fully operate, maintain, and improve the wastewater treatment plant facility.

Before this exchange can be completed, however, the NPS has certain obligations, legal and otherwise, that it must meet in order to fulfill its role as a responsible steward of the public land. These obligations include notifying the public of our intent to enter into the exchange, soliciting public comment, and identifying and analyzing any potential effects on environmental and cultural resources. While we have every reason to believe the exchange will be completed without unnecessary delay, the fact of the matter is that these procedural obligations take time to complete. I thank you for your patience as the NPS works towards meeting these important requirements.

Similarly, I understand the PSD is operating under the constraints of its own timeline as it works with the lending institution, contractor, and other entities to ensure the project is funded, planned, and executed in a timely manner. For that reason, and to further demonstrate the NPS

commitment to accomplish the project, I issued a short-term Special Use Permit (SUP NCR HAFE 5300-390) that allows the ongoing operation and maintenance of the facility while the exchange is finalized.

It has recently come to my attention that some confusion exists as to the whether or not certain site preparation activities related to the upgrade of the sludge processing system – including foundation preparation, setting conduits for electrical wiring, and the like – are allowed under the terms of the permit. After reviewing the plans provided by Alpha Associates, Inc., and further discussing the proposal with Chief Executive Officer, Richard Klein, my staff and I have determined that these activities are permitted. You and the selected contractor may therefore take this letter as permission to proceed with the site preparation activities. If the scope of the site preparation work is substantially altered, however, I ask that you contact me prior to proceeding so that my staff and I can evaluate those plans against the conditions of the permit.

If you have any questions regarding the permit, the current status of the exchange agreement, or require additional information, please do not hesitate to contact me.

Sincerely,

Rebecca L. Harriett

Rebecca L. Harriett
Superintendent

DEED

THIS DEED, made and entered into this 24th day of JUNE, 2009, by and between **THE TOWN OF BOLIVAR,** a municipal corporation existing under the laws of the State of West Virginia, party of the first part (hereinafter "Town" or "GRANTOR"), and **HARPERS FERRY-BOLIVAR PUBLIC SERVICE DISTRICT,** a public corporation organized and existing pursuant to the provisions of W.Va. Code § 16-13A-1 et seq., party of the second part, (hereinafter "District" or "GRANTEE");

WITNESSETH:

THAT, WHEREAS, at a regular session of the Town Council of the Town of Bolivar ("Council"), held in the Town Hall on the 5th day of November, 2008, a town ordinance ("Ordinance") was duly enacted by Council and entered of record authorizing the transfer and conveyance to the District of three (3) certain parcels of land owned by the Town consisting of unopened and/or unused portions of Union Street and Jefferson Street, which said parcels are situate on the south side of U.S. Route 340 in the Town of Bolivar and within the boundaries of the Harpers Ferry National Historical Park, as more fully described hereinafter, which said parcels of land are referred to collectively in the Ordinance, and hereinafter, as the "Exchange Property"; and

WHERERAS, the purpose for the transfer and conveyance of the Exchange Property by the Town to the District, as described in the Ordinance, is to enable the District to then transfer and convey the Exchange Property to the United States Department of the Interior, National Park Service (hereinafter "NPS"), in exchange for the transfer by the NPS to the District of certain property interests in land owned by the NPS and on which certain of the District's facilities are located; and

WHEREAS, the Ordinance provides that unless, within eighteen (18) months of the enactment of the Ordinance, the Exchange Property shall be transferred to the District and shall then be transferred by the District to the NPS, the said Exchange Property shall remain with, or revert to, the Town; and

WHEREAS, the Ordinance authorizes and directs the Mayor and other officers of the Town to execute all necessary documents and to take all actions deemed necessary or appropriate to carry out the intentions of Council as reflected in the Ordinance;

NOW THEREFORE WITNESSETH: That, for and in consideration of the sum of TEN DOLLARS ($10.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the said Grantor, The Town of Bolivar, a municipal corporation existing under the laws of the State of West Virginia, does hereby GRANT AND CONVEY, with covenants of Special Warranty, unto the said Grantee, the Harpers Ferry-Bolivar Public Service District, a public corporation organized and existing pursuant to the provisions of W.Va. Code § 16-13A-1 et seq., all of the following described lots or parcels of real estate, including all appurtenances thereunto belonging situate, lying and being in the Bolivar Corporation District, Jefferson County, West Virginia:

TRACT ONE:

Beginning at a concrete monument of the National Park Service number 16 (found disturbed) on the southern right-of-way of Lake Quigley Drive (WV Rt. 340/10) and the eastern right-of-way of Union Street in the Town of Bolivar (the point of beginning tract 1); thence, leaving the southern right-of-way of Lake Quigley Drive and continuing with the eastern right-of-way of Union Street in the Town of Bolivar, S 00° 09' 40" E, 66.00' to a National Park Service concrete monument number 15 (found disturbed); thence, with the southern right-of-way of Union Street in the Town of Bolivar, S 81° 05' 20" W, 37.44' to a National Park Service concrete monument number 14 (found); thence, with the western right-of-way of Union Street in the Town of Bolivar, N 00° 09' 40" W, 68.00' to a National Park Service concrete monument number 13 (found disturbed); thence, with the southern right-of way of Lake Quigley Drive (WV Rt. 340/10), N 84° 08' 10" E, 37.18', to the point of beginning, containing 2,479 square feet, more or less, as shown on a plat of survey entitled Plat of Exchange Properties between the USA and The Harper's Ferry Public Service District, prepared by Alpha Associates Incorporated, dated May 8, 2009, to be recorded immediately prior to this deed, which is incorporated herein by reference for descriptive and all other pertinent purposes.

TRACT TWO:

Beginning at a National Park Service concrete monument number 12 (found) and located on the southern right-of-way of Lake Quigley Drive (WV Rt. 340/10), S 83° 19' 47" W, 100.00' from the National Park Service concrete monument number 13 (corner of tract 1); thence, leaving said right-of-way, S 37° 47' 27" E, 94.92' to a unmarked point along the eastern right-of-way of Jefferson Street in the Town of Bolivar; thence, with the southern right-of-way line of Jefferson Street in the Town of Bolivar, S 71° 06' 46" W, 25.00' to a National Park Service concrete monument number 10 (found); thence, with the western right-of way line of Jefferson Street in the Town of Bolivar, N 37° 47' 27" W, 101.10' to an unmarked point in the southern right-of-way of Lake Quigley Drive, (WV Rt. 340/10) and the western right-of way of Jefferson Street in the Town of Bolivar; thence, with said right-of-way of Lake Quigley, N 83° 18' 24" E, 27.62' to the point of beginning, containing 2,318 square feet, more or less, as shown on a plat of survey entitled Plat of Exchange Properties between the USA and The Harper's Ferry Public Service District, prepared by Alpha Associates Incorporated, dated May 8, 2009, to be recorded immediately prior to this deed, which is incorporated herein by reference for descriptive and all other pertinent purposes.

TRACT THREE:

Beginning at a point in the northern right-of-way of Lake Quigley Drive, (WV Rt. 340/10) and N 37° 47' 27" W 35.34' from the northwest corner of Tract 2; thence, with the western right-of-way of Jefferson Street in the Town of Bolivar, N 37°

47' 27" W, 53.13' to an unmarked point in the southern right-of-way of WV Rt. 340 and the western right-of-way of Jefferson Street in the Town of Bolivar; thence, with the said southern right-of-way of WV Rt. 340, N 57° 00' 46" E, 25.70' to an unmarked point; thence, leaving the southern right-of-way of WV Rt. 340 and running with the eastern right-of-way of Jefferson Street in the Town of Bolivar and property line of Oak Tree Rental Properties L.L.C and Cynthia Gayton, S 36° 58' 36" E, 66.28' to an unmarked point in the northern right-of-way of Lake Quigley Drive; thence, running with the northern right-of-way of Lake Quigley Drive, (WV Rt. 340/10), S 84° 09' 24" W, 28.89' to the unmarked point and point of beginning of Tract 3 on the northern right-of way of Lake Quigley Drive, containing 1,495 square feet, more or less, as shown on a plat of survey entitled Plat of Exchange Properties between the USA and The Harper's Ferry Public Service District, prepared by Alpha Associates Incorporated, dated May 8, 2009, to be recorded immediately prior to this deed, which is incorporated herein by reference for descriptive and all other pertinent purposes.

The above conveyance is made subject to all prior reservations, exceptions, restrictions, covenants, easements, rights-of-way and other conditions as made and imposed upon the subject real estate by the Grantor, its predecessors in title, any duly-authorized governmental agency or authority, and other instruments of record pertaining to said real estate.

The Grantor warrants that it has no knowledge or reason to believe that the subject property or its substrata contains an underground storage tank which is regulated by the provisions of the West Virginia Underground Storage Tank Act, W.Va. Code §22-17-19.

DECLARATION OF CONSIDERATION OR VALUE

In accordance with and pursuant to the provisions of Article 22 of Chapter 11 of the West Virginia Code, the undersigned hereby declares that the transaction is exempt from the payment of excise taxes on the transfer of real estate as it is a transfer from a political subdivision of the State of West Virginia to a political subdivision of the State of West Virginia.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

WITNESS the following signature and seal by the duly authorized agent thereof:

THE TOWN OF BOLIVAR

By: Timothy J. Collins
Its: Mayor

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

The foregoing instrument, bearing date of June 24, 2009, was acknowledged before me this 24 day of June, 2009, by Timothy J. Collins the Mayor of The Town of Bolivar, a municipal corporation existing under the laws of the State of West Virginia, for and on behalf of said municipal corporation.

My commission expires: September 5, 2016

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Phyllis J. Reed
C. W. Shipley Elementary School
652 Shipley School Road
Harpers Ferry, WV 25425-3131
My commission expires September 5, 2016

Phyllis J. Reed
NOTARY PUBLIC

This document was prepared without benefit of title examination and on behalf of the Grantee by: Heather Gentile, Jackson Kelly PLLC, P.O. Box 619, Morgantown, WV 26507-0619.